

Tennessee Judicial Nominating Commission
Application for Nomination to Judicial Office


Rev. 26 November 2012


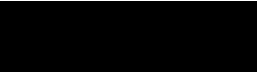
Name: David Michael Bell

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(including county) _____

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(including county) _____

Home Phone:  Cellular Phone: 

INTRODUCTION

Tennessee Code Annotated section 17-4-101 charges the Judicial Nominating Commission with assisting the Governor and the People of Tennessee in finding and appointing the best qualified candidates for judicial offices in this State. Please consider the Commission'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 Commission 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 <http://www.tncourts.gov>). The Commission 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 word processing document.) Please read the separate instruction sheet prior to completing this document. Please submit the completed form to the Administrative Office of the Courts in paper format (with ink signature) **and** electronic format (either as an image or a word processing file and with electronic or scanned signature). Please submit fourteen (14) paper copies to the Administrative Office of the Courts. Please e-mail a digital copy to debra.hayes@tncourts.gov.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I am currently employed primarily as an Assistant Federal Defender for the Western District of Tennessee. I am also employed by the University of Memphis Cecil C. Humphreys School of Law as an Adjunct Professor.

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 the State of Tennessee in 2003. My Board of Professional Responsibility number is 022675.

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 I have been licensed to practice law in. I have been admitted to practice law before the state courts of Tennessee as well as before the United States District Court for the Western District of Tennessee and the Sixth Circuit Court of Appeals.

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).

No.

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).

Prior to completing law school at the University of Memphis, I had been employed as the Head Law Clerk at the Shelby County Public Defender's Office; upon graduation, I accepted a position with that office as an attorney. I started my career as most do with that office, handling the defense of misdemeanor charges in General Sessions Court, though the relationships I had developed with the attorneys of the office allowed me to sit second chair with several senior attorneys on a number of trials, including my first jury trial before Judge James Beasley of Criminal Court Division Ten. I would also volunteer to handle cases before the smaller municipal courts of Shelby County, such as those in Bartlett, Germantown, Collierville, and Millington – I enjoyed getting to know different areas and people and how the prosecutors and judges of those courts handled justice. I was quickly advanced from misdemeanors to drug court and on to felonies, and in a very short period of time was offered a position practicing before Judge Joe Dailey in Criminal Court Division Five during his last year as a judge. I spent the next several years representing indigent defendants in cases before the Criminal Courts of Shelby County, handling motions and trials before nearly every judge in the Criminal Justice Center located at 201 Poplar Avenue.

After spending nearly five years as an attorney and seven years total with the Shelby County Public Defender, I was offered a position as an Assistant Federal Defender for the Western District of Tennessee, which I accepted. The transition from state practice to federal practice was at times trying, but I worked diligently to make sure that I would be giving my clients the best representation possible. For the past five years, I have represented clients in the federal courts in Memphis and Jackson, Tennessee, in cases ranging from white collar economic and fraud prosecutions to firearm and drug cases, in every stage from the initial appearance before a magistrate through trial and sentencing. I have also been fortunate to handle appellate matters before the Sixth Circuit Court of Appeals in Cincinnati, from writing briefs to oral argument.

In the Summer of 2011, I was also offered a position as an Adjunct Professor at the University of Memphis School of Law, which I happily accepted. Since that time, I have been teaching first-year students how to research, write and argue in a course called Legal Methods.

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 the completion of 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.

As an Assistant Federal Defender, I represent indigent clients in criminal law matters before the United States District Court for the Western District of Tennessee (Western and Eastern Divisions) as well as before the Sixth Circuit Court of Appeals. This involves handling criminal prosecutions from the initial appearance phase, through the discovery and motion phase, into the trial phase and to the completion of the sentencing and appeal phases, if necessary. I would say handling cases at the District Court level comprises approximately 80% of my practice and handling cases at the Appellate Court level comprises approximately 20% of my practice.

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 Commission 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 Commission. Please provide detailed information that will allow the Commission 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. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

My experience as a practicing attorney has been exclusively in the realm of criminal law. I have handled misdemeanor and felony cases, from driving offenses to first degree murder charges. I have practiced before municipal courts around Shelby County, General Sessions Courts in Shelby County, Criminal Courts in Shelby County, as well as before Magistrate and District Federal Courts and the Sixth Circuit Court of Appeals.

While I have certainly assisted other attorneys in their cases, whether by sitting second chair in their trials or handling their appeals at times, I have almost exclusively been the primary attorney on the cases I have handled. This means I was charged with budgeting my time efficiently amongst my caseload and concurrently handling the entire caseload while the cases were in various stages of the process. This is very similar to the way a judge must be able to handle his or her docket – able to shift his or her mindset from an arraignment on one case to a trial on another case to a sentencing on a third case, all in the same day. I have a great deal of experience in that skill and believe that experience would translate well to the bench. More importantly, though, I understand that the responsibility all comes back to the judge, and there is no shifting the burden to another. In my practice, I have accepted such responsibility and would continue to do so as a judge.

Being a trial lawyer first, I have spent many a weekend and late night preparing cases because it

was that commitment to the case that the case deserved. I can remember many Sundays after church driving to the Shelby County Jail or the West Tennessee Detention Facility to see clients because it had to be done. When a person's rights and freedom are involved, and when justice demands that a prosecution be swift and timely, it is my job to be available to my clients whenever and whenever I can. I look at being a judge in the same way. In fact, one of the many things I have learned practicing before the federal courts of the Western District of Tennessee is that cases can be handled and tried, if necessary, in a speedy and efficient manner, and I think I would take that mindset to the bench. After all, it is not only a defendant that deserves a speedy trial, but victims and society as well.

I have argued bond motions, motions to suppress, motions in limine, sentencing and appeals, and all of these have involved a great deal of writing. I think legal writing is a particular strength of mine, and that is one reason the University of Memphis School of Law asked me to be an Adjunct Professor in the Legal Methods Program, teaching first-year students research and writing. I think this is a skill that is crucial for any judge and should not be discounted in an evaluation of one's candidacy.

I have also worked with many wonderful investigators, paralegals, clerks and support staff over my time as an attorney. In everything from motion and trial preparation, the ability to delegate responsibility and work well with others is crucial, and I feel that I have done so well. A judge in Criminal Court likewise must have a skilled and responsible staff, but must know how to delegate responsibilities in order to have a professional and efficient courtroom, a skill I possess.

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

I have handled a number of trials and appeals of note in the courts I have practiced before. As a Shelby County Public Defender, my most noteworthy trial was likely the Jonathan Everett case, # 06-06767, before Judge Lee Coffee in Criminal Court Division Seven. Mr. Everett's case was featured on the television show "The First 48" and was a murder case in which Mr. Everett was facing a life sentence plus 50 years in prison. I filed motions, investigated, and eventually tried the case; Mr. Everett was found guilty of the lesser charge of Second Degree Murder and sentenced to 29 years on all charges.

In federal court, I represented a man named Shahid Baseer, case # 07-20341, who was charged with possessing one bullet while a convicted felon when he called the police to take him to a treatment facility to receive mental health assistance. After being convicted at trial, he was facing fifteen years to life in prison; I successfully argued to then District Court Judge Bernice Donald that such a sentence constituted cruel and unusual punishment under the Eighth Amendment's proportionality principle and Mr. Baseer was instead sentenced to six years in prison.

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.

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 not served as a fiduciary.

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

As a law clerk for the Shelby County Public Defender's Office, I wrote many motions and did a great deal of research and writing for both the appellate and capital defense divisions of that office. While in law school, I was also appointed by the Western District of Tennessee Federal Court as a law clerk in a death penalty case, and researched and wrote motions in that case as well. Finally, I think the Commission should know that I have both enjoyed my time as an Adjunct Professor at the University of Memphis School of Law, but also have been effective; last year, six of my eleven students made Law Review, an excellent percentage.

13. List all prior occasions on which you have submitted an application for judgeship to the Judicial Nominating Commission 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.

I have not previously submitted an application for judgeship.

EDUCATION

14. List each college, law school, and other graduate school which 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.

University of Memphis Cecil C. Humphreys School of Law: Fall 2000 – Spring 2003; Juris Doctor, 2003.

- Joseph Moore Award, Outstanding Oral Advocate of Class of 2003
- Dean's Distinguished Service Award, Class of 2003
- Associate Chief Justice, Moot Court Board
- Member, National Moot Court Teams, 2001 and 2002
- Best Brief, National Moot Court Competition: Region VII, 2001
- Criminal Law Society

Earlham College, Richmond, Indiana: Fall 1994 – Spring 1998; Bachelor of Arts, Politics, 1998.

- Corella and Bertram F. Bonner Scholarship
- Convenor, Community Fund Committee
- Member, Men's Lacrosse Team
- Foreign Study at University of Aberdeen, Scotland, United Kingdom, 1997

PERSONAL INFORMATION

15. State your age and date of birth.

Age: 37. Date of Birth: January 3, 1976.

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

Since June of 1998. I was born and raised in Tennessee, went to college in Indiana and studied abroad in Scotland between August 1994 and May 1998, then moved back to Memphis afterward. I have made my home here since that time.

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

I have lived in Shelby County, Tennessee continuously since June of 1998.

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

Shelby County, Tennessee.

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.

I have not served in the military.

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

No.

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.

No.

22. If you have been disciplined or cited for breach of ethics or unprofessional conduct by any court, administrative agency, bar association, disciplinary committee, or other professional group, give details.

No.

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.

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

No.

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.

Yes. Before I started law school, I was in an auto accident. The other party to the accident filed suit against me for damages. I had insurance, who represented me, and the case was settled and dismissed. The case was in Shelby County Circuit Court, Division Five, and the case number was CT003108-00.

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 which you have held in

such organizations.

Idlewild Presbyterian Church, 1750 Union Avenue, Memphis, TN

- Deacon, 2008-2011
- Chair, Idlewild Peacemaking Committee, 2011

27. Have you ever belonged to any organization, association, club or society which 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.

No.

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 which you have held in such groups. List memberships and responsibilities on any committee of professional associations which you consider significant.

I have been a member of the Memphis Bar Association on and off during the last ten years, and was a member of the Tennessee Association of Criminal Defense Lawyers as well. For most of the past five years, however, I have had little involvement in these bar associations and professional societies. I decided to commit my time instead to my role as a Deacon in my church, Idlewild Presbyterian, and more importantly to raising my two daughters, who are now ages four and five years old. I think bar associations and professional societies are a wonderful idea when you have the extra time to commit to them, but I felt that during the pre-school years of my daughters' lives, my time was better spent with them when not at work. Now that they are beginning school, I anticipate more involvement with bar associations and professional societies.

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

accomplishments.

I was fortunate to receive the coveted award of "Shelby County Outstanding Performer" during my time as a Shelby County Public Defender. I was honored to be a member of the Memphis Bar Association Leadership Forum's Class of 2008. I was also proud to be accepted into the National Criminal Defense College's Trial Practice Institute in 2011.

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

I have not published any articles or books.

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 am currently employed by The University of Memphis Cecil C. Humphreys School of Law as an Adjunct Professor, and I teach first-year students a course called Legal Methods, which instructs them in legal research and writing as well as oral advocacy. I have been so employed since the Fall of 2011. I also taught a CLE Course on the "Effects of State Offenses on Federal Sentencing" at the Shelby County Criminal Justice Center in the Fall of 2009.

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 have neither held nor been a candidate for any public office.

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

No.

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

1. United States of America vs. Michael Stone, Case # 09-20387: Motion to Suppress (100% own effort).
2. United States of America vs. Tyreece Fossett, Case # 12-20017: Position Paper/Sentencing Memorandum (100% own effort).

ESSAYS/PERSONAL STATEMENTS

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

I am a simple, humble Christian man who cares for his family and has committed his life to seeking justice for the people of Shelby County, Tennessee. I believe that I have the knowledge, experience, and temperament to serve the people of Shelby County as a judge of their Criminal Court in a fair and efficient manner. I believe in equality, in respect for the laws of the State and Federal Governments, and I believe that both individuals and society as a whole deserve speedy, evenhanded justice. And I believe I could be a good leader who would help search for solutions to the problems our county, state, and society are faced with.

36. State any achievements or activities in which you have been involved which 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)*

As both a County and Federal Defender, I have sought equal justice under the law at every turn. I feel, however, that I have taken it further whenever possible by trying to address issues that the community struggles with and needs educating about. While with the county, I started a program to educate high school students about the necessity of obtaining and maintaining a valid driver's license, called "To Keep Your License, Know the Law." I wrote a teaching manual and recruited attorneys and judges to go into Memphis City Schools and teach about the criminal justice system and how difficult it is to get out. And as a member of the Memphis Bar Association's Leadership Forum, I helped design a program to teach elderly citizens about applying for a property tax freeze to help them maintain their fixed incomes, which we taught at area community centers.

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 appointment to the Criminal Court for the Thirtieth Judicial District of Tennessee, which covers Shelby County, Tennessee. It handles exclusively criminal cases and has ten judges, all of whom I have either practiced before or know professionally. I have spent twelve years of my life immersed in the practice of criminal law and am knowledgeable about all of the laws that I would be charged with upholding. My experience handling appellate matters has educated me about the necessity of maintaining a proper record and following the law and its precedent. My selection would assure the citizens of Shelby County that they would be represented by a neutral arbiter of the law who would treat them equally while running his courtroom efficiently and workmanlike, with a balance of the academic curiosity of the law and the plain language and understanding that all who are before the court deserve.

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 obviously committed my life to public service, as evidenced by my jobs as both a County and a Federal Defender. My role as a Deacon at my church was one that humbled me and truly taught me to care for others both in my congregation and outside. As a Deacon and the Chair of our Peacemaking Committee, we worked with the impoverished of the Binghampton neighborhood of Memphis, both through the McMerton Community Garden that helped community members learn to cultivate their own food and with Caritas Village, which provided support to those struggling to make ends meet and educate their children. I have also been fortunate to support the Chickasaw Council of the Boy Scouts of America by participating in their annual sporting clays (trap shooting) event, which combines elements of two of my favorite pastimes, community service and hunting. Aside from my church, my most significant financial contribution to a community organization is to the Child Advocacy Center.

If I were appointed judge, I would continue to be involved in the community both through service and leadership. My grandfather, the former Mayor of Hernando, Mississippi, J.B. Bell, taught me that the best leaders were those who humbly served others. I believe that to be true. And judges are in a unique position to provide the sort of apolitical, nonpartisan leadership that I believe we need more of in this country and state.

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

I was raised in Germantown, Tennessee, and attended White Station High School in Memphis; after college, I returned home and attended law school in Memphis. This is my home and I feel particularly responsible for the people who live here. While I am a hunter, fisherman and love the outdoors and the simple country values I learned from my parents and grandparents, I also have come to love the diversity of my city and feel the common bond of the good people who work hard to make this city a great place.

My father was not a lawyer; he was a builder, and I was raised learning the value of hard work.

While other kids received an allowance, I worked at construction sites, and I valued every penny I earned. I also learned that having a job can instill a sense of pride in a person and give them a reason to be a better person. In 2004, after seeing my clients and their families struggle to find a job and support themselves, I started distributing a list, specifically geared towards those in the criminal justice system, of available job opportunities in the Memphis area. I still distribute that list today and it is now distributed by community organizations and government agencies across West Tennessee and North Mississippi.

This is who I would be as a judge – set an example with hard work, abide by simple and strong values, and when you see a problem, look for a solution.

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)*

Yes, I will. The hardest part of my job as a Federal Defender has been representing people charged with child pornography offenses; the substance of the evidence in these cases is sickening and is enough to make a person question the morality of the world we live in. It makes it difficult to look into the eyes of a client charged with such an offense and treat them with the respect every individual charged with a crime deserves. But I have, and I have zealously represented these clients because that is what I swore to do as an attorney and because justice demands that they be presumed innocent.

As a judge, I understand that I might not always like the law I am charged with enforcing, but my oath would be a sacred and solemn one to uphold the laws that the legislature has passed. It should never be forgotten that an activist judiciary denies one of the fundamental rights our citizens hold dear – the equal protection of the law for all people who deserve to know that the law will be enforced uniformly and without prejudice.

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 Commission or someone on its behalf may contact these persons regarding your application.

A. The Reverend Dr. Stephen Montgomery, Pastor
Idlewild Presbyterian Church, 1750 Union Avenue, Memphis, TN 38104
Phone: 901-726-4681 ext. 21 Email: revsteve@idlewildchurch.org

B. The Reverend Margaret Burnett, Associate Pastor for Outreach Ministry

C. Stephen Shankman, Federal Defender, Western District of Tennessee

D. Stephen Bush, Shelby County Public Defender

E. Professor Barbara Kritchevsky, Director of Advocacy, University of Memphis School of Law


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 Criminal Court of the 30th Judicial District of Tennessee, and if appointed by the Governor, 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 Commission 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 Commission may publicize the names of persons who apply for nomination and the names of those persons the Commission nominates to the Governor for the judicial vacancy in question.

Dated: March 9, 2013.


Signature

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

TENNESSEE JUDICIAL NOMINATING COMMISSION
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 which 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 Tennessee Judicial Nominating Commission to request and receive any such information and distribute it to the membership of the Judicial Nominating Commission and to the office of the Governor.

David Michael Bell

Type or Printed Name



Signature

March 9, 2013

Date

022675

BPR #

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

UNITED STATES OF AMERICA,

*

Plaintiff,

*

v.

*

Cr. No. 09-20387-Ma

MICHAEL STONE,

*

Defendant.

*

**MOTION TO SUPPRESS EVIDENCE AND STATEMENTS AND MEMORANDUM IN
SUPPORT**

Comes now the defendant, Michael Stone, by and through his counsel of record, David M. Bell, who, pursuant to Rules 41(h) and 12(b)(3)(C) of the Federal Rules of Criminal Procedure, moves to suppress evidence seized during and after a motor vehicle stop from within the interior of a motor vehicle under his control on January 3, 2008, including without limitation all statements attributed to Mr. Stone and all evidence seized from his person, his automobile, together with all evidence subsequently obtained as a result of that seizure. Should the Court decline to suppress the evidence and statements at issue as a matter of law, the defendant respectfully requests that the matter be set for a hearing.

FACTS

On January 3, 2008, Michael Stone was pulled over in the area of 4150 Millbranch while driving a white Mercury Cougar automobile. Memphis Police Department (“MPD”) officers Sibley and Clark initiated the traffic stop after observing Mr. Stone driving the vehicle with no state license tags affixed. This failure to properly affix state license tags to the vehicle was the sole reason for

the traffic stop.

Upon speaking with Mr. Stone, the officers checked his information through “station B,” the MPD’s crime information database, and were informed that Mr. Stone’s driver’s license had been suspended. At that point, Mr. Stone was placed into custody in the officers’ squad car. The officers then searched the vehicle and found two firearms, a Taurus .38 special and Rossi .38 caliber, in the vehicle’s center console near the floorboard. Officers stated that Mr. Stone told them that he had purchased the handguns several months before for protection.

Mr. Stone was then arrested by Memphis Police and charged with driving with a suspended license, violation of the vehicle registration law, and unlawful carrying or possession of a weapon. The white Mercury Cougar was then released to Mr. Stone’s girlfriend, Temple Boyd, and was neither towed nor impounded. Subsequently, Mr. Stone was charged in a two-count indictment in violation of 18 U.S.C. § 922(g). All evidence obtained and derived from the unlawful search and seizure of Mr. Stone's person, and from the vehicle he was operating, as well as all statements made must be suppressed.

MEMORANDUM OF LAW

The Fourth Amendment to the United States Constitution guarantees that a person’s right “against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause.” U.S. Const. amend IV. The present case does not involve the issuance of a warrant. Therefore, the inquiry must turn to the police officer’s reason for stopping, and thus seizing, Michael Stone as he drove an automobile on January 3, 2008, and whether such a seizure and subsequent search was unreasonable.

The United States Supreme Court has recognized that police may stop a vehicle when

probable cause exists to believe a traffic violation has occurred. Whren v. U.S., 517 U.S. 806, 810 (1996); Delaware v. Prouse, 440 U.S. 648, 659 (1979). The Sixth Circuit Court of Appeals has required that a police officer who performs a stop of an automobile based on a traffic violation must have probable cause to believe that a traffic violation has been committed. U.S. v. Freeman, 209 F.3d 464, 466 (6th Cir. 2000); See also U.S. v. Simpson, 520 F.3d 531, 538-39 (6th Cir. 2008)(analyzing the current state of the law on this subject). Mr. Stone does not challenge the stop of the vehicle; the MPD officers had probable cause to stop him after observing him driving a car without state tags.

However, this Court should find that the police were not justified in searching Mr. Stone's vehicle. After Mr. Stone was removed from his vehicle and placed in the police officer's vehicle, he was under arrest, and the subsequent search of the vehicle was performed without a warrant. The Fourth Amendment to the United States Constitution guarantees a person's right to be free from "unreasonable searches and seizures." U.S. Const. amend IV. Searches performed without a warrant are "per se unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967). One such exception is a search incident to a lawful arrest. See Weeks v. United States, 232 U.S. 383, 392 (1914); Chimel v. California, 395 U.S. 752 (1969). This exception was applied to vehicle searches in New York v. Belton, 453 U.S. 454 (1981).

The Supreme Court recently confronted a case involving such a warrantless search of a motor vehicle in Arizona v. Gant, 129 S.Ct. 1710 (2009). The Gant case involved a case where police had discovered that Mr. Gant had an active warrant for driving with a suspended license, then observed him driving a car, park that car, and walk away from the car. Gant, 129 S.Ct. at 1715. Officers

arrested Mr. Gant some 10-12 feet from the car, handcuffed and locked him in the back of a patrol car, and proceeded to search his car, where they found a gun and drugs. Id. The Supreme Court reviewed the constitutionality of the search in light of Chimel and Belton, and found that “Because police could not have reasonably believed either that Gant could have accessed his car at the time of the search or that the evidence of the offense for which he was arrested might have been found therein, the search in this case was unreasonable.” Id. at 1719.

In light of Gant, the Sixth Circuit decided United States v. Juan Francisco Lopez, 567 F.3d 755 (6th Cir. 2009). In that case, a Kentucky State Trooper arrested Mr. Lopez for reckless driving after observing him driving 106 miles per hour. Lopez, at 756. The trooper secured Mr. Lopez in the back of his patrol car, then searched Mr. Lopez’s car, where he found drugs, scales, and a loaded handgun. Id. at 756-57. The Sixth Circuit, citing the Gant decision, held that such a search was unconstitutional, stating “Lopez was not within reaching distance of his vehicle’s passenger compartment at the time of the search, but was instead handcuffed in the back seat of the patrol car by then. There was no reason to think that the vehicle contained evidence of the offense of arrest, since the offense was reckless driving. The search of Lopez’s vehicle, therefore, violated the Fourth Amendment as interpreted in Gant.” Id. at 757-58.

According to the police, Mr. Stone was under arrest for driving with a suspended license and violation of the vehicle registration law. Nothing that could be found in the vehicle could be evidence of those crimes. When Mr. Stone was in the back of the police car, he was unable to access his vehicle. The police did not allege that the firearms were in plain view and were observed by officers prior to the search. The police did not tow the vehicle, but instead released the vehicle to Mr. Stone’s girlfriend, so the search was not an inventory search. As a result, the search was in

violation of the Mr. Stone's Fourth Amendment rights, and all evidence seized as a result of that search should be suppressed as fruit of the poisonous tree. See Wong Sun v. United States, 371 U.S. 471, 484 (1963). Therefore, the firearm found in the vehicle during the search and the statement subsequently made by Mr. Stone under questioning by the police pursuant to the search should be suppressed.

Should this Court find the stop of the search of the vehicle constitutional, this Court should still find that the police officers obtained statements from Mr. Stone by unconstitutional means. Mr. Stone was in custody and being questioned by police officers at the time of any statements. The Fifth Amendment to the United States Constitution guarantees a person's right not to be "compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." U.S. Const. amend V. This guarantee has been interpreted to apply to the circumstance of police interrogations of the accused. The well-known case of Miranda v. Arizona was clear in its holding that an accused detainee

must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.

Miranda, 384 U.S. at 479. The government has the burden of proving by a preponderance of the evidence both the voluntariness of the defendant's waiver of his Miranda rights and the voluntariness of the defendant's confession. Burke v. Johnson, 167 F.3d 276, 285 (6th Cir.

1999). Simply because the defendant was read his Miranda rights does not end the inquiry of whether a confession is involuntary, intelligent, and knowing and, therefore, violates due process. United States v. Murphy, 763 F.2d 202, 205 (6th Cir. 1985).

The Supreme Court in Miller v. Fenton, 474 U.S. 104 (1985), stated that our system of justice "is an accusatorial and not an inquisitorial system." Miller, 474 U.S. at 110. Further, "tactics for eliciting inculpatory statements must fall within the broad constitutional boundaries imposed by the Fourteenth Amendment's guarantee of fundamental fairness." Id. The Court in Miller continued that "even after holding that the Fifth Amendment privilege against compulsory self-incrimination applies in the context of custodial interrogations . . . the Court has continued to measure confessions against the requirements of due process." Id. (citing Mincey v. Arizona, 437 U.S. 385, 402 (1978); Beecher v. Alabama, 389 U.S. 35, 38 (1967)(per curiam)).

The Supreme Court further noted that

as interrogators have turned to more subtle forms of psychological persuasion, courts have found the mental condition of the defendant a more significant factor in the "voluntariness" calculusBut this fact does not justify a conclusion that a defendant's mental condition, by itself and apart from its relation to official coercion, should ever dispose of the inquiry into constitutional "voluntariness".

Colorado v. Connelly, 479 U.S. 157, 164 (1986)(citations omitted). Connelly further states that in order to establish a valid waiver of Fifth Amendment rights, the government must show that: (1) the waiver was voluntary in the sense that it was a product of free and deliberate choice rather than intimidation, coercion, or deception; and (2) the waiver was made in full awareness of the nature of the right being waived and the consequences of waiving. Connelly, 479 U.S. at 170-171.

A defendant's mental state or capacity must be taken into account in considering if a

confession is voluntary. Culombe v. Connecticut, 367 U.S. 568 (1961). The Culombe court recognized three phases of the issue of voluntariness, the first being the historical facts surrounding the confession. Culombe, 367 U.S. at 603. The second and third phases focus upon the effect on the person giving the confession:

Second, because the concept of "voluntariness" is one which concerns a mental state, there is the imaginative recreation, largely inferential, of internal "psychological fact." Third, there is the application to this psychological fact of standards for judgment informed by the largely legal conceptions ordinarily characterized by rules of law but which, also, comprehend both induction from, and anticipation of, factual circumstances.

Id.

The Sixth Circuit Court of Appeals has stated that "the Fifth Amendment prohibits the prosecution's use of a defendant's compelled testimony." Ledbetter v. Edwards, 35 F.3d 1062, 1067 (6th Cir. 1994)(citing Oregon v. Elstad, 470 U. S. 298, 306-307 (1985)). Also, "the Due Process clause of the Fourteenth Amendment . . .prohibits the admission of coerced confessions procured by means 'so offensive to a civilized system of justice that they must be condemned.'" Ledbetter, 35 F.3d at 1067 (citing Miller v. Fenton, 474 U.S.104, 109 (1985)). In determining if a confession has been elicited by means that are unconstitutional, the Sixth Circuit stated that a "court looks to the totality of the circumstances concerning whether a defendant's will was overborne in a particular case." United States v. Mahan, 190 F.3d 416, 422 (6th Cir. 1999)(quoting Ledbetter v. Edwards, 35 F.3d 1062, 1067 (6th Cir. 1994)). Relevant factors for consideration "include the defendant's age, education and intelligence; whether the defendant has been informed of his constitutional rights; and the length and extent of the questioning; and the

use of physical punishment, such as the deprivation of food or sleep." Mahan, 190 F.3d at 422-423.

In this case, Mr. Stone was seized by the police. He was not free to leave. He was under arrest. Despite these facts, the police officers still questioned him without informing him of his rights under Miranda and, as such, Mr. Stone never waived his rights under Miranda. As a result, any statements made by Mr. Stone should also be suppressed.

CONCLUSION

Wherefore, premises considered, Michael Stone moves this Honorable Court to suppress any and all evidence, including physical evidence and oral statements, which resulted from the illegal search of the automobile Mr. Stone was driving on January 3, 2008. If this Court declines to suppress the evidence as a matter of law, Defense counsel requests an evidentiary hearing and findings pursuant to United States v. Moore, 936 F.2d 287, 289 (6th Cir. 1991) (stating that essential findings on the record are necessary to facilitate appellate review).

Respectfully Submitted,

STEPHEN B. SHANKMAN
FEDERAL DEFENDER

/s/ David M. Bell
Assistant Federal Defender
200 Jefferson Ave., Suite 200
Memphis, TN 38103
(901) 544-3895

CERTIFICATE OF SERVICE

I, David M. Bell, certify that a true copy of the foregoing Motion to Suppress Evidence and Statements was forwarded via the Court's electronic filing system to Ms. Michelle Kimbril-Parks, Assistant United States Attorney, 167 North Main, Suite 800, Memphis, Tennessee, 38103.

This, the 27th day of May, 2010.

/s/ David M. Bell
Assistant Federal Defender

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Cr. No. 12-20017-JTF

TYREECE FOSSETT,

Defendant.

**POSITION OF DEFENDANT WITH RESPECT TO SENTENCING FACTORS
AND
SENTENCING MEMORANDUM**

COMES NOW, the defendant, Tyreece Fossett, by and through his counsel, David M. Bell, and submits his position with respect to the sentencing factors pursuant to §6A1.2 of the United States Sentencing Commission Guidelines Manual. (Effective November 1, 2011).

Mr. Fossett and his counsel have reviewed the presentence report together.

THE SENTENCING HEARING

Pursuant to the Local Rules, this is to notify the Court that the defendant may call some witnesses at his sentencing hearing, and the hearing will possibly last longer than one hour.

OBJECTIONS TO THE PRESENTENCE REPORT

Mr. Fossett and his counsel have one objection to the presentence investigation report:

Paragraphs 19, 23, 25, 27, 77, and Worksheets A and D: Application of § 2B3.1(b)(2)(F)

Mr. Fossett objects to the application of Guideline § 2B3.1(b)(2)(F) for a “threat of death” being made. U.S.S.G. § 2B3.1(b)(2)(F) states that “if a threat of death was made, increase by 2

levels.” Application Note 6 then states that such a threat can be an “oral or written statement, act, gesture, or combination thereof,” and that a defendant does not have to “state expressly his intent to kill the victim.” However, Note 6 goes on to list a number of examples under which the enhancement would apply, including:

Give me the money or I will kill you.

Give me the money or I will pull the pin on the grenade I have in my pocket.

Give me the money or I will shoot you.

Give me the money or else (where the defendant draws his hand across his throat in a slashing motion).

Give me the money or you are dead.

U.S.S.G. § 2B3.1(b)(2)(F), Application Note 6.

In this case, there is no allegation of conduct similar to the listed examples. Instead, Mr. Fossett presented a note that stated, “I need all your money. This is a robbery. I have a gun. Don’t try anything funny.” No firearm was brandished, and Mr. Fossett was not masked. The note did not mention killing or shooting the victim. On its face, Mr. Fossett’s note does not seem to satisfy the requirements set forth in Application Note 6.

The probation officer, in her addendum, addresses this objection by referring this Court to the recently decided case of United States v. Wooten, 689 F.3d 570 (6th Cir. 2012). In Wooten, the court found that the statement “I have a gun” might warrant the enhancement in some cases, and might not warrant the enhancement in other cases. Wooten, at 574-75. In Wooten, the court upheld the district court’s decision that the enhancement did not apply. Id. at 579. On the one hand, the Wooten court observed that the lack of a demand note lessened the threatening nature of that robbery (as opposed to this case, where there was a demand note); on the other hand, the Wooten court observed that the defendant’s lack of a mask also lessened the threatening nature of that robbery

(which is similar to this case where Mr. Fossett likewise did not wear a mask). Id.

This Court should find that the facts surrounding this robbery do not amount to a threat of death being made and the enhancement should not apply. As a result, the Total Offense Level would be 19, and with a criminal history category of IV, the advisory guideline imprisonment range would be 46 to 57 months.

SENTENCING MEMORANDUM

Tyreece Fossett is 29 years old, single and shares a home with his mother and father, Cleothes and Eva Fossett. Mr. Fossett is the father to two minor children who live with their mother and whom he is court-ordered to pay child support for. Mr. Fossett graduated from Westside High School in 2001 and has attended ITT Technical Institute, the University of Phoenix and is now attending Strayer University, from which he is expected to obtain an associate's degree in June of 2013. Mr. Fossett has worked in a warehouse and a steel company, as a debt collector, authorizer and telemarketer, and was most recently employed as a customer service representative for Bridgewater Media until he pleaded guilty to this offense in July 2012, upon which his employment was terminated.

Congress has stated that "the court shall impose a sentence sufficient but not greater than necessary, to comply with the purposes set forth in paragraph (2)" of 18 U.S.C. §3553. The Court is to consider the nature and circumstances of the offense. Here, the offense involves the robbery of a credit union, accomplished by use of a written note and without possession of a firearm. Mr. Fossett admitted to and accepted responsibility for this conduct to the police who arrested him, District Court Judge Mays, and the probation officer in this case.

The Court is to consider the history and characteristics of the defendant. The history and

characteristics of Tyreece Fossett reveal an upbringing in a loving family that cared for him and attempted to teach him right from wrong. Mr. Fossett grew up with hardworking parents who never abused or neglected him, and who raised him in the Christian Church to be a productive member of society. He and his family continue to attend Mt. Olive # 2 Baptist Church in Collierville, TN. He was raised with one brother whom he is still close to, and has another half-brother as well. He performed fairly in school, graduating from high school and going on to take college level courses, which he is still taking at Strayer University. He has two children with the same woman, but the relationship soured and she now refuses to allow Mr. Fossett to see them, which weighs heavily on Mr. Fossett. His parents continue to support him; his mother told the probation officer that Mr. Fossett that he grew up “real shy and quiet,” has “always attended church” and “never gave them any problems.” Ms. Fossett further was perplexed over her son’s current legal problems, saying that she “can’t figure out what happened” but also that her “son is very sorry for what he has done.” PSR, Paragraph 54.

Mr. Fossett had no problems with the law as a juvenile. It wasn’t until he was 19 years old that he has legal issues, primarily for minor driving offenses. Aside from the present case, the majority of Mr. Fossett’s criminal history centers around three forgery/theft convictions that all came on the same date in 2007 and surround the same set of circumstances with forged checks. Mr. Fossett later attempted to bring tobacco and marijuana into the Shelby County Correctional Center while serving his sentence on those forgery/theft cases and pleaded guilty to that case. None of his convictions or arrests ever involved a firearm or weapon; there is no indication of violence in Mr. Fossett’s history.

Mr. Fossett’s has had a problem with smoking marijuana since he was a young man; he told

the probation officer that he began smoking the drug at age 19 or 20 until April of this year. Indeed, he tested positive for the drug once after he was placed on pretrial supervision in this case. However, since that time, he has consistently tested negative for the drug. While this should indicate to the Court Mr. Fossett's seriousness about removing such a distracting and illegal substance from his life, Mr. Fossett admits that he likely could still use help making sure he stays away from controlled substances, and would ask this Court to consider substance abuse treatment as a part of his sentence.

At the time of his detention hearing, it became clear to the Magistrate Court that Mr. Fossett has some mental health issues, and he was ordered to undergo both mental health counseling and gambling addiction classes as a part of his pretrial release. These sessions have been a revelation for Mr. Fossett. For the past several months, Mr. Fossett has been attending Gambler's Anonymous classes at Christ United Methodist Church, and has made significant progress, though he still has a long way to go. He was also referred to West Tennessee Forensic Services for mental health counseling, and while he has been compliant with all attendance requirements, it has been a struggle. Perhaps it has been because of the combination of his gambling addiction, his alienation from his minor children, and some of the circumstances surrounding the testosterone therapy he received as a child, which may or may not have resulted in the inflammation and pre-cancer removal of a testicle some eight years ago. Regardless, Mr. Fossett continues to attend his counseling and try to develop a better understanding of himself and his problems. Along these lines, Mr. Fossett has been fortunate to have Mr. Dean Hearn in his life, a counselor from his church who has also taken it upon himself to attempt to mentor and counsel Mr. Fossett and help him find the right path.

This Court is confronted with a man who has made some terrible mistakes in his life. In this case, he walked into two credit unions without a mask on, unarmed and in full view of the security

cameras, and handed notes to the tellers asking for money. The only word he ever uttered was “more.” He was arrested shortly after the second robbery, driving the same car that was registered in his name and which he has driven to and from both robberies. Between the two robberies, he admittedly took the money from the first robbery and lost it gambling at a casino in Tunica, Mississippi, and at a strip club.

On the other hand, this Court is faced with a man who is trying to get his life back on track. He is attending Strayer University and should obtain his degree in June of 2013. He is clean and has been off of marijuana for several months. He is regularly attending Gambler’s Anonymous meetings and is undergoing mental health counseling and treatment to address his obvious issues. He has strong church home and both family and members of the community that support him, as evidenced by the letters submitted to the Court with this filing. This Court should review all of the supplements filed with this memorandum, evidencing not only that support but also his education, work history, medical issues, and Gamblers Anonymous attendance, and consider that Mr. Fossett is a man that can still be saved and make something of his life.

In this case, considering the circumstances of the offense, the history and characteristics of the defendant, there is not a need to impose a further sentence of confinement. If this Court finds that the enhancement under § 2B3.1(b)(2)(F) *does not apply*, the advisory sentencing range provides for a range of 46 to 57 months of incarceration; if this Court finds that said enhancement *does apply*, the advisory sentencing range provides for 57 to 71 months of incarceration. However, the facts of this case and the history and circumstances of the defendant warrant a variance from the advisory range. Mr. Fossett has accepted responsibility for his actions and is remorseful for what he has done. There is no excusing the crime he committed. But for a man with no history of violence who did not

even have a firearm during this robbery, his progress since his arrest is indicative of the person he wants to be and the person this Court can help him to be, with a restrictive and well-designed plan of supervision. Therefore, the defense respectfully requests this Honorable Court to sentence Tyreece Fossett to a total sentence of twenty four (24) months of home confinement on GPS electronic monitoring, followed by thirty six (36) months of probation, and the full three (3) years of supervised release. For the duration of this eight year sentence, he should be subject to drug testing and treatment, obtaining his degree and then obtaining and maintaining full-time employment, continuing his Gambler's Anonymous meetings and his mental health counseling, and paying back the restitution he owes these institutions. This is a sentence that will be extremely restrictive and ensure that Mr. Fossett stay on the right path; if he violates, he goes to prison, end of story.

Wherefore, premises considered, the defendant prays for the requested relief.

Respectfully submitted,

Stephen B. Shankman
FEDERAL DEFENDER

s/ DAVID M. BELL
Assistant Federal Defender
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Memphis, TN 38103
(901) 544-3895

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing POSITION OF DEFENDANT WITH RESPECT TO SENTENCING FACTORS has been forwarded by electronic means via the Court's electronic filing system to Lorraine Craig, Assistant U.S. Attorney, 167 N. Main, Suite 800, Memphis, TN 38103.

This 25th day of October, 2012.

s/ DAVID M. BELL
Assistant Federal Defender

Group Seeks Attorneys To Teach Drivers About Avoiding Traffic Court

By Rosalind Guy

When David Bell first joined the Shelby County Public Defender's Office four years ago, one of the things that struck him most about his caseload was that more than half of the cases involved some kind of driving offense.

"I was working (in General Sessions Court) and I started to notice that a whole lot of the cases - at least 50 percent of the cases we had - were 'driving while license revoked' cases or in some way had something to do with driving," he said.

One particular case involved a client who was facing 11 months and 29 days in jail for driving on a suspended license. Bell said his first thought when he saw that was, "How in the world can they want this guy to spend 11 months and 29 days in jail for driving on a suspended license?"



DRIVING UNDER THIS INFLUENCE: Public Defender David Bell is looking for attorneys to volunteer for a Memphis City Schools program called "To Keep Your License, Know the Law," which he created. -- Illustration By Philip Thompson

Bell found out, however, that the client had 27 prior convictions for which he served some jail time.

That's when Bell decided there had to be a way to get to people before they found themselves caught up in the criminal justice system unnecessarily.

With the blessing of his supervisors, Bell created "To Keep Your License, Know the Law," an outreach program through Memphis City Schools.

Be all that you can be

Bell and Nigel Lewis, another attorney in the public defender's office, currently are recruiting attorneys to participate in the program.

Driver's education is an elective 12-week course offered to students 15 years old and older each semester at select city schools. The volunteer attorneys usually speak at 12 to 15 schools in the fall and then again in the spring.

On a day when the driver's education instructor has confirmed the students will remain inside for instruction, one of the attorneys will visit the school and talk to students about driving offenses such as DUI (driving under the influence), driving on a suspended/revoked

license and leaving the scene of an accident. Attorneys teach either two or three hours a day per semester from a script Bell devised.

But he said the public defender's office is known more for dealing with major cases such as murders, rapes, assaults and aggravated robberies than driving offenses.

"Those are the big, violent and important crimes that people always want to talk about on the news and everything like that," he said. "So, driving with a suspended license isn't sexy, it's not something that's exciting. But I think it's crucial."

At the very least, most jobs require applicants to have valid driver's licenses, he said.

Learning the system

City Court Clerk Thomas Long, who has launched a number of programs since taking office targeting young people having trouble paying traffic fines, said he definitely can see the merits of a system such as the one Bell created.

"The program is definitely a very important one," he said. "There's no question that the program is really needed. When the students go through (a) driver education course, they learn how to operate an automobile, but the missing piece would be the court system."

Long said it should be a requirement in the school system to have children visit 201 Poplar Ave. and find out what really takes place before they end up there.

The "Know the Law" course attorneys are teaching the driver's education students is definitely a step in the right direction, he added.

"For most young people, their first encounter with the legal system is due to a driving offense, either speeding or other parking violations," Long said. "And, unfortunately, most of the young people don't realize that they either have two options, that they can either pay the ticket or come to court. This doesn't disappear."

Bell said one of the things the attorneys try to get across to the young student drivers is that driving a car is a privilege, not a right. And it's one they must be careful with.

"It doesn't say in the Constitution of either Tennessee or the United States you have the right to drive; that's not one of the amendments," Bell said. "You (do) have a right to be treated equally; if you want to go out and take the test, you can get a driver's license, but you're also going to be treated equally when it comes to paying your tickets, not paying your tickets and getting your license suspended."

Growing need

Bell said a solid base of attorneys is volunteering to take part in the program, about 50 percent public defenders and 50 percent private-practice attorneys. And he said that every attorney who has gone out and spoken to the students has called him and told him they'd love to do it again.

If he can build a solid program for the Memphis City Schools, Bell said he'd eventually like to work with the Shelby County Schools on a similar program.

"We haven't had enough attorneys yet to do that, and we haven't had a contact over there," he said. "But I think once we feel solid enough with our number of attorneys and all the Memphis City Schools are covered, if we can get enough attorneys, then that's an area I'd like to expand into next."

For more information about volunteering for the "To Keep Your License, Know The Law" program, call Bell at 545-5854 or Lewis at 545-3960.

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NEWS • THE FLY-BY

March 12, 2009

On the Job

Public defenders — and an enthusiastic volunteer — help defendants find work.
by [BIANCA PHILLIPS](#)

Lines of people awaiting criminal and general sessions court snake around the basement of 201 Poplar on Monday morning. All is fairly quiet until a petite woman sporting a retro beehive, false eyelashes, and a stack of papers turns the corner past the escalator.

"Good morning, babies!" shouts the cheerful Maurise McCraw, a volunteer with the public defender's office. "Does anyone need a job this morning? Need to pay the light bill? Or the mortgage?"

Bored expressions turn to smiles as defendants take the stapled papers from McCraw. Each morning, McCraw hands out hundreds of job listings compiled by assistant federal public defender David Bell. Bell creates the weekly list from local classifieds and job-finding websites to help defendants — many of whom are unskilled or uneducated — find work.

"When a person gets a job, there's a change in them," Bell says. "People who have never really had a steady job get trapped in a cycle, but when they find jobs, they seem to feel better about themselves. It's great for their family and the community."

Bell began creating the list when he worked in the Shelby County public defender's office in 2004. He's since moved to the federal public defender's office but continues to put together the list each week.

"I kept having clients tell me how hard a time they were having finding a job. Then one Sunday, I opened the classifieds to see what was out there for someone with a high school education or less," Bell says. "I made a little list for one of my clients, and then I started giving it to a few more clients."

Eventually, a general sessions judge took note of Bell's list and asked if she could have copies to hand out to defendants in court. These days, the list is distributed to numerous judges, the Shelby County Sheriff's Office, the Veterans Administration, local probation and parole offices, and several nonprofit agencies.

McCraw receives the list on Monday mornings from assistant Shelby County public defender Jennifer Case. McCraw makes copies and hands them out to "her babies," as she affectionately refers to courtroom defendants.

"Felons feel like they can't get jobs, but thanks to this list, a lot of my babies have gone to work," McCraw says.

Bell's list, typically about five pages long, includes jobs ranging from forklift operators and data-entry specialists to fast food employees and cashiers. It also includes a sample resume.



BY BIANCA PHILLIPS
Maurise McCraw hands out job listings to "her babies" at 201 Poplar.

"One thing this list does is give people hope," says Robert Jones, Shelby County chief public defender. "Newspapers and the Internet can be overwhelming, but David looks for jobs that our clients would be able to do, like grass cutting or construction. It's a user-friendly list and it's not so intimidating."

Tough economic times have made Bell's project a bit harder, however. He says the number of jobs for unskilled workers has been cut in half.

"A lot more items on the jobs list are now part-time work," Bell says. "And when I'm looking for jobs, I see more and more of these scam work-from-home-type ads. I'd say we have 50 percent fewer jobs on the list than we did before 2008."

But that won't stop McCraw and the public defender's office from trying to help defendants find much-needed work.

"Unless we address some of the underlying problems, our clients will continue to come back into the [court] system," Jones says. "If they've got a job, they're less likely to come back."

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