

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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INTRODUCTION

The State of Tennessee Executive Order No. 54 (May 19, 2016) 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. 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 Microsoft Word format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website www.tncourts.gov). The Council requests that applicants obtain the Microsoft Word form and respond directly on the form using the boxes provided below each question. (The boxes will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit your original, hard copy (unbound), completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your hard-copy application, or the digital copy may be submitted via email to ceesha.lofton@tncourts.gov. See section 2(g) of the application instructions for additional information related to hand-delivery of application packages due to COVID-19 health and safety measures

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Circuit Court Judge, Part III
16th Judicial District (Rutherford and Cannon 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 Tennessee in 2000 and my Board of Professional Responsibility number is 0020544.

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 have been licensed to practice law. I was licensed on April 24, 2000 and my license is currently active.

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).

I completed my legal education in 1998 at the Nashville School of Law.

May 1, 1997 - September 1, 2000

Law Clerk for the Honorable Cheryl Blackburn, 20th Judicial District

September 1, 2000 - April, 2003

Sole Practitioner - Law Office of Barry R. Tidwell - Nashville, Tennessee

April, 2003 - February, 2006

Partner - Tidwell Cartee, PC - Nashville, Tennessee

February, 2006 - January, 2013

Partner - Price & Tidwell - Murfreesboro, Tennessee

January, 2013 - August 31, 2014

Associate Attorney - Bulloch, Fly, Hornsby & Evans - Murfreesboro, Tennessee

September 1, 2014 - November 30, 2017

Rutherford County General Sessions Judge, Part II

December 1, 2017 - Present

Circuit Court Judge, Part III - 16th Judicial District - Rutherford and Cannon Counties

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.

Not applicable.

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.

I am currently a Circuit Court Judge in the 16th Judicial District. My docket consists of 90% criminal cases, 5% Orders of Protection, and 5% Mental Health Court.

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.

During my first through third year of law school (1993-1997) I worked at the Metro Nashville Legal Department in Nashville, Tennessee. While my general duties were as a runner for the department, I would, on occasion, be called upon to do legal research for the staff attorneys. The research included issues involving one or more of the departments within the Metro Nashville Government and was supervised by one of the staff attorneys. The experience I gained was invaluable and touched on a wide array of areas of the law including civil rights violations, contract negotiations and disputes, delinquent property tax enforcement, and issues with legislation before the Metropolitan Counsel.

In May of 1997, at the end of my third year of law school, I was hired by the Honorable Cheryl Blackburn, Criminal Court Judge of Division III, 20th Judicial District, as her law clerk. During my three and one half years with Judge Blackburn my legal experience was solely in the areas of substantive criminal law and criminal procedure.

As Judge Blackburn's law clerk I assisted her in drafting memoranda of law; performing legal research; compiling jury charges; taking notes during motion hearings and trials; and any number of other related judicial tasks. My primary areas included assisting in the drafting of memoranda of law in the areas of post-conviction relief, writs of *habeas corpus*, and motions to suppress evidence.

The experience of being closely involved in the day-to-day operations of a judicial office was very rewarding. Likewise, the opportunity to watch up-close the process that Judge Blackburn took in deciding important issues, many of which affected lives for years to come, gave me the basis for the approach that I took every day in my General Sessions courtroom and now take and use as a Circuit Court judge. This approach affects my preparation, discretion, and interactions with members of the bar and litigants.

On September 1, 2000, I opened a solo law practice in Nashville, The Law Office of Barry Tidwell, in a suite of offices that had a mix of both new and experienced lawyers. In the beginning I took appointed cases in the Davidson County General Sessions Court. I also took guardian *ad litem* appointments for conservatorship cases out of the Probate Court of the 20th Judicial District. My practice quickly evolved into a general practice where I took cases involving domestic relations, criminal defense, basic estate planning, personal injury, and workers' compensation.

In April of 2003 I took on a partner, Eric Cartee, and we opened an office in Nashville under the business name of Tidwell Cartee. We practiced a true partnership where we both focused on criminal defense and personal injury cases. We often assisted each other on the firm's cases and all cases were interchangeable among each partner.

In 2003 two events occurred that changed my law practice:

1. I was admitted to the Criminal Justice Act (CJA) panel of lawyers for the Middle District of Tennessee.

This panel of lawyers is limited to lawyers who have been chosen due to experience and skill to take appointed criminal cases in federal court. No lawyers but those on the panel of lawyers are permitted to accept appointments in the Middle District of Tennessee. From 2003 until September 1, 2014 I represented fifty-six (56) clients through the CJA panel. I had an additional handful of privately retained clients charged with federal offenses. Four (4) of these cases were tried to a jury.

In addition to this number, I represented clients in regards to federal civil rights violations, petitions for *habeas corpus* relief, and other general civil matters.

2. In 2003 I was hired by a client to defend him in a civil case in which he was accused of surreptitiously stealing DirecTV satellite signals. One client led to another and within a few years I had represented well over one hundred (100) individuals who had either been sued in the Western, Middle, or Eastern District of Tennessee or who had been threatened to be sued by DirecTV.

The volume of these lawsuits required focused organization because at any given time the cases would be in different stages of litigation. The experience I gained in the area of civil litigation for the duration of these cases was invaluable. The issues presented were complex and at one point resulted in my assisting other lawyers from the Eleventh Circuit prepare for oral argument before the Eleventh Circuit Court of Appeals sitting in Miami, Florida. After a few years, DirecTV discovered that the cost of prosecuting these cases far outweighed any return and they stopped filing lawsuits.

In April of 2006 I moved my practice to Murfreesboro and formed the firm of Price & Tidwell with my former law partner John Price. Our practice involved the general practice of law, in both state and federal courts, and specifically included the areas of personal injury cases, domestic relation cases, criminal defense matters, and estate planning/probate cases. Although our practice included several areas of law, our primary focus was on criminal defense. I practiced primarily in federal court and my partner practiced primarily in state court. It was during my time with Price & Tidwell that I tried *State of Tennessee v. Antonio Alexander*, a death penalty case.

In January 2013 I joined the Murfreesboro law firm of Bulloch, Fly, Hornsby & Evans. While at the firm I continued to handle personal injury cases, domestic relation cases, criminal defense matters, and estate planning/probate cases. However, my primary focus was on federal criminal defense cases.

In August of 2014 I won a county-wide contested election and on September 1, 2014 took the bench on the Rutherford County General Sessions Court, Part II. My duties included holding court five (5) days a week. My schedule included the following: Monday - Violation of Probation and Criminal Docket; Tuesday - Special set hearings and assist fellow judges with his or her docket; Wednesday - Suspended License docket and Mental Health Court; Thursday - Criminal Docket; Friday - Tennessee Highway Patrol docket, Violation Docket, and Criminal Docket.

In November of 2017 I applied for the open Circuit Court seat created by the untimely death of my predecessor, Judge Keith Siskin. I, along with the entire bar, was deeply saddened by Judge Siskin's death as he was a great mentor to me and was the consummate professional. He was also a fabulous judge. I was appointed to Judge Siskin's seat and took the oath of office on December 1, 2017. I have served as the Circuit Court Judge for Part III since this date.

My initial Circuit Court Docket consisted of civil cases. My caseload included divorce, post-divorce matters, personal injury, medical malpractice, and all other civil matters that came before me. Non-jury divorce and post-divorce trials were extremely common and my caseload was very large.

On December 1, 2019, I took over a criminal docket from retiring Judge Royce Taylor. Since that date my dockets have been exclusively criminal cases. These dockets consist of new criminal cases involving misdemeanors and felonies, violations of probation, and the Mental Health Court docket. I would think that combining my time in General Sessions Court as well as my time in Circuit Court I have heard thousands of cases since taking the bench in 2014.

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

State of Tennessee v. Eric White, CCA No. M2001-02731-CCA-R3-CD - After a jury trial conviction I represented Mr. White on appeal. The Court of Criminal Appeals reversed the conviction based upon insufficiency of the evidence. The case was reversed and dismissed. The primary reason for listing this otherwise routine appeal of a jury verdict in a criminal case is that I received a reversal on sufficiency of the evidence, which is relatively rare because it results in a dismissal of the case (or charges), so early in my career. At the time I thought it might never happen again and I was right. While I had other cases on appeal and did have some degree of success in those few cases, I never had another case reversed and dismissed at the appellate level.

State of Tennessee v. Paul Dennis Reid, Davidson County Case Nos. 97-C-1834 and 97-C-1836 - I was the law clerk for the trial court Judge Cheryl Blackburn during these two (2) death penalty trials. Although Judge Blackburn was assisted by a capital case attorney from the Administrative Office of Courts, I was involved in most discussions concerning rulings in the case and became very well versed in the case law concerning the evidentiary issues that arose during these two (2) capital murder cases. These cases were extremely complex due to the mental health issues put forward by the Defendant as well as the relatively new case law ultimately set out in *State v. Burns*, 6 S.W.3d 453 (1999), addressing lesser included offenses.

DirectTV v. Multiple clients - At one point I was the only attorney in Tennessee taking multiple clients in this multi-state litigation involving the surreptitious interception of satellite signals of DirecTV. The litigation lasted for approximately two (2) years and other than my federal criminal defense cases this area of the law was my sole focus at the time.

The crux of the litigation were claims of violations of the Federal Communications Act of 1934, as amended, 47 U.S.C. § 605(a), for the unauthorized reception of satellite signals; violations of the Electronic Communications Privacy Act, 18 U.S.C. §§ 25210-2521, for interceptions signals and/or possession of devices primarily useful for interception; violations of the Tennessee wiretapping statute, Tenn. Code Ann. § 39-13-601; violations of the Tennessee theft of services statutes, Tenn. Code Ann. §§ 39-14-104, 7-59-109; and violations of Tennessee common law for conversion.

Over the course of the litigation, I represented approximately twenty-four (24) clients in the Federal Courts in the Eastern District of Tennessee, one (1) client in the Eastern District of Kentucky, twenty-six (26) clients in the Middle District of Tennessee, and fifteen (15) clients in the Western District of Tennessee. Of all of these cases only one (1) went to trial, *DirectTV v. Taylor*, 2:03-cv-02376, Western District of Tennessee. The remaining cases were either resolved or dismissed by the plaintiff.

State of Tennessee v. Antonio Alexander, Rutherford County Case No. F-64676 - I was lead counsel in this death penalty case that was tried to a jury over approximately two (2) weeks. I

was appointed to be lead counsel after first being qualified to be on the list of attorneys with sufficient experience to be listed among those eligible to be appointed as lead counsel in a death penalty case. The case presented many complex issues in regards to death penalty litigation. Mr. Alexander was found guilty at the conclusion the guilt phase of the trial and was sentenced to Life Without the Possibility of Parole after the penalty phase of the trial.

I still vividly remember standing up with my client and co-counsel to receive the penalty phase verdict in this case. The room was silent and all eyes were on the jury foreman as he read the verdict. As for any lawyer who has stood with his or her client in the face of such life or death drama, anything else I experienced either in private practice or on the bench has been easy, or at least easier.

United States v. Travis Lynn Gentry, et al., 3:2011-cr-00207, Middle District of Tennessee - This case was tried to a jury and took, including deliberations, approximately seventeen (17) trial days. Mr. Gentry was charged with violations of 21 U.S.C. § 846 and § 2 with Conspiracy to Distribute Drugs; 18 U.S.C. § 1956(h) Money Laundering; 18 U.S.C. § Possession of Firearms in Furtherance of Drug Trafficking; and 18 U.S.C. § 922(g)(1) being a Convicted Felon in Possession of Firearms. This case presented extremely complicated set of facts that covered many years and raised a multitude of legal issues that took approximately twenty-one (21) months to get to a jury trial. The original complaint in this case was returned in March of 2011 and a verdict was returned in November of 2012.

United States v. Woody H. Medlock, Sr., 3:10-cr-00004(1), Middle District of Tennessee - This case was tried to a jury. I, along with co-counsel Brian Roark, Sarah Bogni and, initially, Matthew Curley, of Bass, Berry & Sims, represented Mr. Medlock in this false claims case brought by the U.S. Attorneys office in the Middle District of Tennessee. Mr. Medlock was charged with violations of 18 U.S.C. §371, Conspiracy to Commit Healthcare Fraud and Make False Statements Related to Healthcare Matters; 18 U.S.C. § 1347, Healthcare Fraud; 18 U.S.C. § 1035, False Statements Related to Healthcare Matters; 18 U.S.C. § Wire Fraud; and 18 U.S.C. § 1028(a)(1), Aggravated Identity Theft. This case had a very complex set of facts relating to the charges that Mr. Medlock, as the principal owner of an ambulance service in Murfreesboro, Tennessee, submitted false claims for reimbursement from the Centers for Medicare and Medicaid Services (CMS) related to the transport of patients to dialysis clinics for treatments. Additionally, the legal issues presented directly relating to the filing of false claims to CMS are generally not run of the mill federal criminal cases. Therefore, I was more than happy to have co-counsel from Bass, Berry & Sims assist me in an area of the law that my co-counsel were well versed.

The case was tried to a jury over eight (8) trial days including deliberations.

I have also tried the following First Degree Murder cases to to a jury.

State of Tennessee v. Antonio Hanserd - Davidson County Case No. 2001-A-396

State of Tennessee v. Warren Walton - Davidson County Case No. 2003-A-184

State of Tennessee v. Lavonia Johnson - Davidson County Case No. 2003-B-852

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.

General Sessions Judge, Rutherford County, Tennessee - I was elected as a General Sessions Judge in August of 2014 and I took office on September 1, 2014. My docket consisted of approximately 80% criminal cases, 5% civil asset forfeiture cases, 5% Mental Health Court, 5% suspended license docket, 4% Tennessee Highway Patrol citation docket, and 1% civil cases.

Over more than three (3) years as General Sessions Judge I heard thousands of cases, most of which were criminal cases.

Circuit Court Judge, 16th Judicial District, (Rutherford and Cannon Counties) - In November of 2017 I was appointed by Governor Bill Haslam to the Circuit Court Bench. I took office December 1, 2017. My docket upon appointment was 100% civil. My civil docket included divorce, post-divorce matters, medical malpractice, accident and injury cases, worker's compensation, general business related cases, and any other civil matter that might be assigned to me.

On December 1, 2019, I took over the criminal docket for retiring judge Royce Taylor. Since this time I have presided over criminal cases exclusively. As with many jurisdictions, our criminal case numbers are extremely high and I would think I have presided over thousands of criminal cases.

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

When I first began in private practice many years ago I took appointments from the Davidson County Probate Court as a *guardian ad litem* in conservatorship cases. Judge Clement frequently appointed young lawyers to the cases and it was a great learning experience in the laws on conservatorship.

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

attention of the Council.

Although listed elsewhere, I would like to highlight my Mental Health Court Docket. When I was elected in 2014, I immediately looked for areas in which I could serve the community through my position as a sitting judge. It became apparent that our jurisdiction would benefit from a Mental Health Court, which falls under the umbrella of Recovery Courts.

We formed a very talented committee, the least of which was myself, and made plans to start the docket and address the problem of mental health issues in the criminal justice system. In February of 2017, I presided over the first Mental Health Court docket with two (2) participants. The Mental Health Court program now has over forty (40) participants who get regular medication, therapy, drug treatment, counseling, and oversight. Most get clean from drugs and many get jobs, go back to school, and get their driver's license back.

The Mental Health Court has been a success in giving the participants the tools needed to avoid new arrests and become productive members of the community. The docket has become the highlight of my week.

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 or similar 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 submitted an application in 2012 for an opening on the 16th Judicial District Circuit Court. I was not chosen as one of the three (3) applicants sent to the Governor for consideration.

I submitted an application in 2017 for a opening on the 16th Judicial District Circuit Court. I was selected as one of the three (3) applicants sent to Governor Haslam for consideration and in November of 2017, Governor Haslam appointed me to the seat.

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.

Middle Tennessee State University - August 1988 - August 1992 - Bachelor of Science - Criminal Justice major, Psychology and Political Science minors.

Nashville School of Law - August 1993 - May 1998 - Doctor of Jurisprudence

PERSONAL INFORMATION

15. State your age and date of birth.

Age 50. Born [REDACTED] 1970.

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

I have lived continuously in the State of Tennessee for almost 51 years.

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

I have lived continuously in Rutherford County for 17 years.

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

I am registered to vote in Rutherford 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.

I have not served in the military.

20. Have you ever pled guilty or been convicted or placed 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.

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. 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.

I have had two (2) formal complaints filed against me with the Board of Professional Responsibility to which I have had to respond. Both complaints were dismissed.

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. *Jason L. Holley v. Price & Tidwell, John Price, and Barry Tidwell*. Rutherford County Chancery Case No. 09-1731MI. In this case a former client sued my firm, my partner, and myself for the return of a \$750.00 fee. Our position was that the fee had been earned. The case was dismissed on August 11, 2011. Mr. Holley filed a Notice of Appeal but never filed a brief. The appeal was dismissed and Mr. Holley was taxed with the costs on June 4, 2012. (See Court of Appeals No. M2011-02010-COA-R3-CV).

State of Tennessee, Plaintiff-in-error v. Spencer Shulke, Aggrieved Defendant; General Sessions Court, hereinafter I.C. Inferior Court Counter Defendants - This lawsuit was filed on April 20, 2015, against the General Sessions judges by a sovereign citizen alleging various Constitutional violations. The case was dismissed on June 26, 2015.

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.

Middle Tennessee Christian Student Center

Board Member - 2004 - 2016

Board Chair - 2009 - 2012

Habitat for Humanity of Tennessee

Board Member - 2013 - Present

Board Chair - 2017 - Present

Rural Hill Church of Christ

Deacon - 2003 - Present

Lions Club - Murfreesboro Downtown Barristers Chapter

2014 - 2017

Club President - 2015 - 2016

Ezell-Harding Christian School

Board Member - 2014 - Present

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.

While at Middle Tennessee State University I was a member of the Sigma Phi Epsilon fraternity. Membership was limited to men. I have not had any involvement with the fraternity since leaving Middle Tennessee State University in 1992.

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.

Tennessee Bar Association - January 2009 - March 2009; January 2012 - March 2012; August 2014 - August 2017

Rutherford/Cannon County Bar Association - 2006 to Present

Criminal Justice Act Panel (Middle District of Tennessee) - 2004-2014

Murfreesboro Downtown Barristers Lions Club - 2014 - 2017

Andrew Jackson Inns of Court - 2014 - Present

Tennessee General Sessions Judges Conference - 2014 - 2017

Tennessee Judicial Conference - 2017 - Present

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.

Criminal Justice Act 10 year service award - November 14, 2014

Tennessee Judicial Academy - August 18-22, 2014

Tennessee Judicial Mini-Academy - March 2018.

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

I have not been published in any legal publication or book.

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.

Overview of Supreme Court of the United States Justices from Tennessee -

Rutherford/Cannon County Bar Association - August 2016

Mental Health Court Overview

Judicial Commissioners Conference - July 2017

REEL Ethics

Barristers Lions Club - August 2017

The Use of Rule 41 Electronic Search Warrants: Lessons Learned and Practical Tips

General Sessions Judges Conference - September 2017

Electronic Search Warrants Overview

Tennessee Judicial Conference - March 2020

Effective Courtroom Technology that Works

Tennessee Judicial Conference - March 2020

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.

Rutherford County General Sessions Court, Part II - I was elected to this position in August of 2014 and took office on September 1, 2014.

Circuit Court, Part III, 16th Judicial District - I was appointed in November of 2017 and took the oath of office on December 1, 2017. Due to the appointment I had to run in the next general election in August of 2018. In August of 2018 I was elected to the position of Circuit Court Judge, Part III.

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

No, I have never been registered as a lobbyist.

34. Attach to this application 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.

1. *Corporate Flight management v. TAL Aviation, S.A., Noafly Aviation, S.A., and Patrice Charles-Louis Mourruau*, Rutherford County Chancery No. 17CV-1549

Order on Defendant Mourruau's Motion to Dismiss for Lack of Personal Jurisdiction

80% my personal effort with the remaining effort coming from the assistance of my law clerk.

2. *State of Tennessee v. John Frederick Lewis*, Rutherford County Circuit Court No. 82174

Order Denying Motion to Suppress

80% my personal effort with the remaining effort coming from the assistance from my law clerk.

3. *State of Tennessee v. Jeremie Wix*, Rutherford County Circuit Case No. 80416

Order

80% my personal effort with the remaining effort coming from the assistance from my law clerk.

ESSAYS/PERSONAL STATEMENTS

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

I really enjoy being a trial court judge. Serving the citizens of Rutherford and Cannon counties is something that I take very seriously and I have always strived to recognize that it is not just a job, but a chance to use my abilities to contribute to our community. I cannot think of any better way to give back to our district than to serve as a Circuit Court Judge for these two (2) counties. However, the part of my current position that I enjoy above all else is taking a legal issue that is contested, performing thorough research, and making a decision. The prospect of being able to routinely research contested issues and make written decisions, coupled with the opportunity to serve the entire State of Tennessee in the capacity of an Appellate Court Judge would be the highlight of my career.

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)*

When I first moved my practice to Rutherford County in early 2006, I began participating in the Christian Legal Clinic which at the time was held at the Salvation Army building in Murfreesboro. The location later changed to the Law Office of John Blankenship. The premise was that people in the community who had legal questions and/or concerns could sign up, meet with an attorney, and have their questions answered.

I also believe that presiding over the Mental Health Court is a meaningful way to demonstrate my dedication to equal justice under the law. Defendants are admitted to this recovery court when it is determined that he or she probably would not be in court but for a mental health illness. The Mental Health Court provides a forum for those with severe mental health issues to receive treatment, training, and counseling as opposed to a prison sentence that may very well fail to address the root causes for the individual's involvement in the criminal justice system.

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 am seeking a seat on the Tennessee Court of Criminal Appeals in the Middle Grand Division which was created by the announced retirement of the Honorable Thomas T. Woodall. There are twelve (12) judges who sit on the Tennessee Court of Criminal Appeals; four (4) from each grand division. The Court of Criminal Appeals hears appeals from the trial courts in felony and misdemeanor cases as well as post-conviction petitions.

My selection would impact the Court by placing a qualified trial court judge on the Court of Criminal Appeals that has seen, litigated, and ruled on many, if not most, of the issues that the Court hears on a regular basis.

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)*

Community involvement is extremely important to me and my wife. I serve on the Board of Directors for Habitat for Humanity of Tennessee and before that on the Board of Directors for Habitat of Humanity of Rutherford County. In addition to my work on the board I have had the honor of participating in two (2) recent Jimmy & Rosalynn Carter Work Projects that took place in Memphis, Tennessee in August of 2016 and Nashville, Tennessee in October of 2019. The privilege to serve on the hospitality crew at these two (2) events was life changing. There is nothing like seeing the faces of those future homeowners hammering and sawing on their own home along with volunteers, celebrities, and others whose sole purpose is to ensure that the homeowners receive safe and affordable housing. In my opinion there is no better way to serve the community than to volunteer at a Habitat for Humanity homesite. My time on the board of Habitat for Humanity of Tennessee is drawing to a close, however, my hope is to continue my involvement by participating as a part of a standing hospitality team that would serve at every future Carter Work Project, both domestic and foreign.

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)*

Making important decisions is something that I have been doing since my first child was born, and something I believe I am ready to do as a member of the Court of Criminal Appeals. A few years after having our first child my wife and I adopted two (2) children. Considering two sides of an argument and making a decision was a skill that my wife and I learned quickly by bringing my two (2) oldest children into our family and making it work. Many of the lessons I learned during the time of adding to our family through adoption I carried with me to the General Sessions bench and then to the Circuit Court bench. I would like to carry those lessons to the Appellate Court.

Along the lines of life experiences, I have a wise uncle who has always said that we have two (2) eyes, two (2) ears, and one (1) mouth and that we should use them in that same ratio. I have reminded myself of that ratio almost daily since taking the bench and have tried to listen before talking, and deciding. I am not perfect in this regard, but I strive everyday to listen much more than I speak.

Finally, I truly see my time as a General Sessions judge and Circuit Court judge as the ultimate way to give back to my community and serve the people in Rutherford and Cannon counties. I would take my attitude towards service on to the Court of Criminal Appeals and would consider a seat on this court as a way to serve people throughout the State.

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 would uphold the law even if I disagree with the substance of the law. I encounter these situations from time to time as a Circuit Court Judge. My philosophy is that a judge's duty is to apply the law as it is written by the General Assembly and avoid at all costs making new law from the bench.

I recall a specific case from my practice of law where I received approximately 5000 documents delivered to my co-counsel pursuant to a Rule 17(c) subpoena in a complex Medicare fraud case. After a review of the documents it became clear that the document contained email correspondence that would be considered work product of opposing counsel, and thus non-discoverable.

It would have been advantageous to my client to read the emails as they could have provided trial strategy and the mindset of our opponent, however, the ethical, legal, and moral answer was to alert opposing counsel and turn the documents over to them. That is what I did.

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.

A. Brad Box

Rainey, Kizer, Reviere & Bell, PLC
[REDACTED]

Jackson, Tennessee 38302
[REDACTED]

Brad is a reference to my fitness to serve a judge. Brad interviewed me in 2017 as a member of the Trial Court Vacancy Commission for my current position and we have stayed in contact on a fairly regular basis since that time.

B. Hon. David Bragg

[REDACTED]
Murfreesboro, Tennessee 37130
[REDACTED]

Judge Bragg is a reference that can speak to my time on the Circuit Court bench, my time as presiding judge in the 16th Judicial District and the navigation required to adapt to COVID-19, and my fitness to serve as a judge.

C. Colleen Dudley

Executive Director, Habitat for Humanity of Tennessee
[REDACTED]

Murfreesboro, Tennessee 37129
[REDACTED]

Colleen is a reference that can speak to my community service with Habitat for Humanity of Tennessee and Habitat for Humanity of Rutherford County, knowledge of my family, and knowledge of my work as an attorney in private practice and later as a judge.

D. Jim Tracy

State Director, USDA Rural Development
U.S. Department of Agriculture
[REDACTED]

Nashville, Tennessee 37214
[REDACTED]

Jim is a reference that can speak to my fitness to serve as a judge, our experiences working together on the State Board of Directors for Habitat for Humanity of Tennessee, and his knowledge of my moral compass, family, and community service.

E. Hon. Ben Hall McFarlin

[REDACTED]
Murfreesboro, Tennessee 37130
[REDACTED]

Judge McFarlin is a reference that could provide information concerning my time on the Rutherford County General Sessions Court. He could speak to my work habits, my fitness to serve as a judge, and my role as a member of the General Sessions Court team.

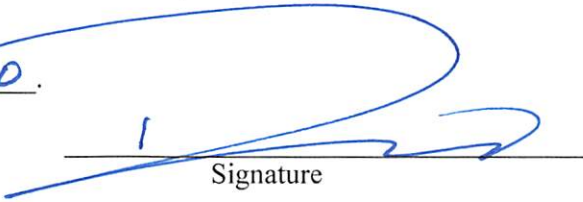
AFFIRMATION CONCERNING APPLICATION

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] 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 application with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this application 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: October 2, 2020.



Signature

When completed, return this application to Ceesha Lofton, 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.

Barry R. Tidwell

Type or Print Name

[Signature]
Signature

October 2, 2020
Date

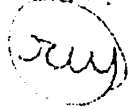
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BPR #

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

IN THE CHANCERY COURT FOR RUTHERFORD COUNTY, TENNESSEE
AT MURFREESBORO

2018 MAY 25 PM 2:35

JOHN A. BRYANT
CLERK AND MASTER



CORPORATE FLIGHT MANAGEMENT, INC.,)
)
Plaintiff,)
)
v.)
)
TAL AVIATION, S.A.,)
(formerly known as NOAFLY, SA))
NOAFLY AVIATION, S.A., and)
PATRICE CHARLES-LOUIS MOURRUAU)

No. 17CV-1549

ORDER

(Defendant Mourruau's Motion to Dismiss for Lack of Personal Jurisdiction)

This matter is before the Court upon the Motion of the Defendant Patrice Charles-Louis Mourruau ("Mourruau") to dismiss the Second Amended Complaint against him for lack of personal jurisdiction. The Court has considered the pleadings, exhibits, and arguments of counsel and finds that the Motion is well taken and hereby GRANTS the Motion to Dismiss.

The facts found by the Court are as follows: Mourruau is a citizen of France and a resident of Luxembourg. After a successful career in business in Europe, Mourruau retired to Luxembourg. Among his retirement hobbies are spending time on his yacht and sailing it to various parts of the world. To get to and from his yacht Mourruau will oftentimes charter a flight to get from one destination to another.

On November 10, 2016, Mr. Mourruau entered into a contract with Defendant NOAFLY Aviation, S.A. ("NOAFLY"), under which he paid 300,000.00 Euros in exchange for 55 flight hours on aircraft to be provided by NOAFLY ("NOAFLY Contract"). In the NOAFLY Contract, NOAFLY expressly agreed to sell Mr. Mourruau 55 flight hours on a Legacy 650 type aircraft. NOAFLY represented to Mr. Mourruau

that the Legacy 650 aircraft was owned by a third party (Mr. Sultan al Moussa), who had sold a block of hours on the aircraft to NOAFLY. Mr. Mourruau understood that NOAFLY was authorized to allow him to use a portion of those hours to fulfill its obligations under the NOAFLY Contract. NOAFLY also represented that if Mr. Moussa's Legacy 650 was unavailable, NOAFLY would undertake to fly Mr. Mourruau in its Global 6000 aircraft. If neither the Legacy 650 nor Global 6000 were available, NOAFLY agreed to provide a replacement aircraft by subcontracting with third parties, so long as it remained liable to Mr. Mourruau for the performance of its obligations under the contract.

Pursuant to the terms of the NOAFLY Contract, Mr. Mourruau paid NOAFLY the full contract price on November 17, 2016, by arranging a transfer of the funds to NOAFLY's bank account. The contract price included a provision of the Legacy 650 or "any replacement aircraft," along with all incurred operating costs. The NOAFLY Contract explicitly states that all disputes are subject to the jurisdiction of Luxembourg courts. The NOAFLY Contract was never altered or amended by the parties.

In early May 2017, Mr. Mourruau arranged to use some of his remaining flight hours under the NOAFLY Contract to travel roundtrip from Luxembourg to Turks and Caicos. On May 4, 2017, NOAFLY provided Mr. Mourruau flight briefing that stated he would be flying on a Dassault Falcon 7x on his way to Turks and Caicos. Ultimately NOAFLY provided a different plane for his May 13, 2017 return trip to Luxembourg. The aircraft provided for the return trip was operated by Plaintiff, CFM. Mr. Mourruau's return flight originated in Turks and Caicos and ended in Luxembourg. No part of the flight entered the United States.

Throughout Mr. Mourruau's dealings with NOAFLY, he understood that any aircraft it provided (including the flight at issue here) was in satisfaction of its obligations under the NOAFLY Contract to provide him with 55 flight hours, for which Mr. Mourruau had already paid. Apart from the 300,000.00 Euros he paid pursuant to the NOAFLY Contract, Mr. Mourruau never agreed to pay anyone for flights arranged by NOAFLY.

To fulfill its obligation to Mr. Mourruau, NOAFLY entered into a contract with CFM to provide the flight from Turks and Caicos back to Luxembourg. Mr. Mourruau was not a party to the Quote for Aircraft Services ("Quote") and at no point did Mr. Mourruau authorize NOAFLY to enter into the Quote or any other agreement on his behalf as a broker or agent, nor did he ever agree to accept any financial or other responsibility for satisfying NOAFLY's obligations under the Quote or any other agreement with CFM or any other third party. Mr. Mourruau was not even aware of the Quote until he was served with the Complaint on March 13, 2018.

Furthermore, Mr. Mourruau has never visited, conducted business in, or been physically present in the state of Tennessee. He has never transacted any business with a resident of Tennessee, nor does he have any assets, relatives, or other contacts in the state. To the best of his recollection, he had never even corresponded or communicated with anyone in Tennessee before receiving service of the Complaint.

ANALYSIS

The Court in deciding this Motion follows the procedures set out in Tenn. R. Civ. P. 12.02 (2). Motions to Dismiss for Lack of Personal Jurisdiction challenge the trial court's ability to proceed with the claims against a defendant. *State v. NV Sumatra*

Tobacco Trading Co., 403 S.W.3d 726, 739 (Tenn. 2013). In considering a motion to dismiss for lack of personal jurisdiction, the Court should construe the complaint liberally and assume the truth of the allegations contained therein. To avoid dismissal, a Plaintiff must present a prima facie case for jurisdiction by setting forth specific facts demonstrating that the Court may exercise jurisdiction over the defendant. *Manufacturers Consolidation Serv., Inc. v. Rodell*, 42 S.W.3d 846, 854 (Tenn. Ct. App. 2000). Once the defendant challenges jurisdiction, the plaintiff must establish a prima facie showing of jurisdiction by responding with its own affidavits or other written evidence. See *Posner v. Essex Ins. Co. Ltd.*, 178 F.3d 1209, 1214 (11th Cir. 1999); *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 171 F.3d 779, 784 (2nd Cir. 1999); *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1091 (10th Cir. 1998). The question for the Court in this case is whether, taking the Plaintiff's factual allegations as true and resolving all reasonably disputed facts in the Plaintiff's favor, the Plaintiff has shown by a preponderance of the evidence that Tennessee Courts may exercise jurisdiction over the Defendant, Mr. Mourruau. See *Gordon v. Greenview Hospital*, 300 S.W.3d 635 (Tenn. 2009).

It is clear that Mourruau is a resident of Luxembourg and a citizen of France and is not capable of being served with process in Tennessee. Thus, Plaintiffs must rely on Tennessee's long-arm statute found in Tenn. Code Ann. § 20-2-214. Personal jurisdiction under Tennessee's long-arm statute, in turn, incorporates the Due Process Clause of the Fourteenth Amendment. The Plaintiff bears the burden of proving that Mourruau has, or has had, minimum contacts with the State of Tennessee and the cause of action arises out of those minimum contacts. Due Process requires only that in

order to subject a defendant to Judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fairplay and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), quoting *Millican v. Meyer*, 311 U.S. 457, 463, 61 S. Ct. 339, 85 L. Ed. 278 (1940).

Additionally, personal jurisdiction over a nonresident defendant may be exercised by either general or specific jurisdiction. The United States Supreme Court recognized this distinction in *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 & nn. 8, 9, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984), and the Tennessee Supreme Court did the same in *J.I. Case Corp. v. Williams*, 832 S.W.2d 530, 532 (Tenn. 1992), overruled in part by *Gordon v. Greenview Hosp., Inc.*, 300 S.W.3d at 649 n. 11. Specific jurisdiction exists when a defendant has minimum contacts with the forum state and the cause of action arises out of those contacts. *State v. NV Sumatra Tobacco Trading Co.*, 403 S.W.3d 726, 744 (Tenn. 2013). General jurisdiction, on the other hand, may be proper even when the cause of action does not arise out of the defendant's activities in the forum state. *Id* at 744. A state's courts may assert general jurisdiction when the defendant is "essentially at home" in the state. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 131 S. Ct. 2846, 2851, 180 L. Ed. 2d. 796 (2011). Being essentially at home means that a nonresident defendant's contacts with the forum state are "sufficiently continuous and systematic" such that it would be fair to subject the defendant to suit in the forum state, even when the cause of action arises elsewhere. *Goodyear v. Brown*, 131 S. Ct. at 2854; see also *Helicopteros Nacionales*, 466 U.S. at 414-16, 104 S. Ct. 1868; *Gordon v. Greenview Hosp., Inc.*, 300 S.W.3d at 648-9.

The Court finds that none of the standard bases for general jurisdiction are present in this case. Mourruau does no business in this state and has no registered agent to accept service of process in Tennessee. Mourruau is not a party to any ongoing contracts that subject it to jurisdiction in this State. Mourruau has never lived in the State of Tennessee, has no property or business interests in the State of Tennessee, and by his own sworn statement has never visited, conducted business in, or been physically present in the State of Tennessee.

Plaintiff is further unable to satisfy their burden of proving that Mourruau is subject to specific jurisdiction in Tennessee. Specific jurisdiction may be found when a defendant purposely directs activities toward citizens of the forum state, and the litigation arises from or relates to those activities. *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 112, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987). The Tennessee Supreme Court in *Tennessee v. NV Sumatra Tobacco Trading Co.*, 403 S.W.3d 726, provided a summary of the specific jurisdiction law in Tennessee.

Tennessee's long-arm statutes are designed to permit its courts to assert personal jurisdiction to the fullest extent authorized by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Due process permits a state to enforce its judgments against a defendant only when the defendant has sufficient minimum contacts with the state that jurisdiction does not offend traditional notions of fairplay and substantial justice. Minimum contacts are present when the defendant's purposeful conduct and connection with the forum state are such that the defendant avails itself of the benefits and protections of the state's laws and should, therefore, reasonably anticipate being haled into that state's courts. Assessing minimum contacts

involves a two-part test. The first step is the fact gathering exercise of identifying the relevant contacts. The plaintiff is required to establish that minimum contacts exist by a preponderance of the evidence. The court should consider the quantity of the contacts, their nature and quality, and the source and connection of the cause of action with those contacts. A defendant's contacts are sufficiently meaningful when they demonstrate that the defendant has purposefully targeted Tennessee to the extent that the defendant should reasonably anticipate being haled into court here. If the court finds sufficient minimum contacts, then the inquiry should proceed to the second step. At step two, the defendant bears the burden of showing that, despite the existence of minimum contacts, exercising jurisdiction would be unreasonable or unfair. The court, at this stage, should consider such factors as the burden on the defendant, the interests of the forum state, the plaintiff's interest in obtaining relief, the judicial system's interest in obtaining the most efficient resolution of controversies, and the state's interest in furthering substantive social policies. *Burger King v. Rudzewicz*, 471 U.S. 462, 471-8, 105 S. Ct. 2174 (1985); *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 291-4, 100 S. Ct. 559 (1980); *International Shoe*, 326 U.S. at 316-19, 66 S. Ct. 154; *Gordon Greenview Hosp., Inc.*, 300 S.W.3d at 645-9; and *Lindsey v. Trinity Commc'ns, Inc.*, 275 S.W.3d at 417-8.

In this case, the Court finds that the Plaintiff cannot demonstrate that Mourruau purposefully directed his activities at citizens of Tennessee such that he intended to avail himself of the benefits and protections of Tennessee's laws and, therefore, expect to be haled into Tennessee courts. Moreover, Plaintiff cannot show that the quantity, quality, and nature of any contacts Mourruau might have had with

Tennessee are sufficient to confer jurisdiction in Tennessee, that Tennessee has a substantial interest in the outcome of this litigation, or that Tennessee is the most convenient forum in which to adjudicate this dispute.

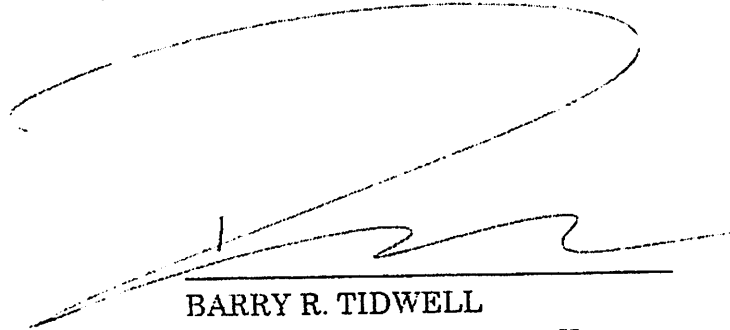
The focus of the Court's inquiry is on whether this litigation arises out of some act of Mourruau whereby Mourruau purposefully availed himself of the privilege of conducting activities within Tennessee; however, none of the core allegations in the Plaintiff's Complaint relate to any act by Mourruau within the State of Tennessee.

Accordingly, the Court finds that the Plaintiff cannot establish sufficient contacts between the Defendant and this State for the Court to exercise personal jurisdiction over Mourruau. Any exercise of *in personam* jurisdiction would not comport with the Due Process Clause of the U.S. Constitution. Therefore, the Defendant Mourruau is hereby dismissed as a party to this suit.

CONCLUSION

Based on the evidence provided, argument of counsel, and all applicable legal authority, the Court hereby GRANTS the Defendant Patrice Charles-Louis Mourruau's Motion to Dismiss the Second Amended Complaint, as to himself. All other matters are reserved pending final litigation in this case.

It is so ORDERED, this the 25th day of May, 2018.

A large, stylized handwritten signature in black ink, appearing to read 'B. Tidwell', is written over a horizontal line. The signature is fluid and cursive, with a large loop at the top.

BARRY R. TIDWELL
Circuit Court Judge, Part III

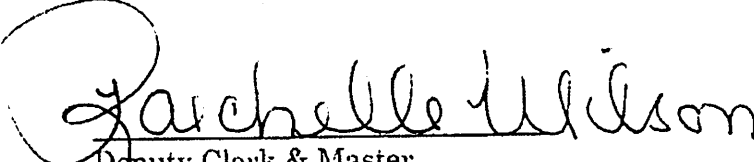
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order has been mailed, postage prepaid, to the parties and their counsel (if any) on this, the ~~25th~~ ^{29th} day of May, 2018.

(jwy)

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Attorneys for Defendant, Patrice Charles-Louis Mourruau


Deputy Clerk & Master

IN THE CIRCUIT COURT FOR RUTHERFORD COUNTY, TENNESSEE
AT MURFREESBORO

STATE OF TENNESSEE,)
)
 Plaintiff,)
)
 v.)
)
 JOHN FREDERICK LEWIS,)
)
 Defendant.)

Case No. 82174

FILED
SEP 24 2020
O'CLOCK _____ M
MELISSA HARRELL JSM
DEPUTY CLERK

ORDER DENYING MOTION TO SUPPRESS

This cause came to be heard on August 20, 2020 on the Defendant's Motion to Suppress. After hearing the testimony of Detective Wesley Hall of the Murfreesboro Police Department and making credibility findings, the Court respectfully **DENIES** the Defendant's Motion to Suppress.

FACTS

The Court finds that the following facts are applicable to the decision on this Motion: On March 7, 2019, Detective Wesley Hall with the Murfreesboro Police Department was on a directed patrol at "The Pointe" apartment complex when he made contact with the Defendant, John Frederick Lewis. The particular area is a high crime neighborhood and that the interaction with the Defendant occurred around 11:20 p.m. No other law enforcement officers were present.

Detective Hall observed Mr. Lewis sitting in a parked vehicle in one of the apartment complex's parking spots. The detective noticed that the vehicle's lights were on and he decided to engage in consensual contact with the Defendant. Detective Hall pulled his unmarked Ford Taurus about fifteen (15) feet past Mr. Lewis' vehicle, perpendicular to the Defendant's parked car, and approached the passenger side of the vehicle.

Upon approaching Mr. Lewis' vehicle, Detective Hall immediately smelled marijuana and saw a glass jar of marijuana in the center console of the car. At the detective's request, Mr. Lewis gave Detective Hall his name and exited the vehicle. Detective Hall asked the Defendant for consent to search his person and the vehicle, but the Defendant declined consent. Detective Hall testified that the Defendant appeared to be very nervous during the interaction.

After asking the Defendant to exit the vehicle Detective Hall conducted a search of Mr. Lewis' person. The search produced a pill bottle with 167 ecstasy pills and two (2) "baggies" of marijuana. Upon finding these items, Detective Hall read the Defendant his *Miranda* rights and Mr. Lewis admitted to selling drugs to his close friends and family members. The Defendant was not placed under arrest after the search but instead offered an opportunity to cooperate with law enforcement as an informant. Mr. Lewis left on his own accord with instructions to contact another detective the following day about the opportunity to become an informant. On March 11, 2019, an arrest warrant was issued for the Defendant after he did not follow up about cooperating with law enforcement.

The Defendant now challenges the legality of the search of his person, arguing that law enforcement did not obtain a search warrant to conduct the search and that no exception to the warrant requirement existed to justify the search.

LEGAL ANALYSIS

The Fourth Amendment to the United States Constitution and Article I, Section 7 of the Tennessee Constitution guarantee freedom from unreasonable searches and seizures. These guarantees exist to "safeguard the privacy and security of individuals against arbitrary invasions of government officials." *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967); *State v. Downey*, 945 S.W.2d 102, 106 (Tenn. 1997). A search and seizure conducted under a valid

search warrant is presumptively reasonable, but a warrantless search is presumptively unreasonable and the evidence discovered is subject to suppression unless the State demonstrates the search or seizure was conducted pursuant to an exception to the warrant requirement. *State v. McCormick*, 494 S.W.3d 673, 678 (Tenn. 2016) (internal citations omitted). The State has the burden of demonstrating, by a preponderance of the evidence, that a warrantless search passed constitutional muster. *State v. Harris*, 280 S.W.3d 832, 839 (Tenn. Crim. App. 2008).

There are several recognized exceptions to the warrant requirement. One such exception is an investigatory stop. *State v. Simpson*, 968 S.W.2d 776, 780 (Tenn. 1998). An investigatory stop must be based on reasonable suspicion, supported by specific and articulable facts, that a criminal offense has been or is about to be committed. *Terry v. Ohio*, 392 U.S. 1, 20-21 (1968); *State v. Binette*, 33 S.W.3d 215, 218 (Tenn. 2000). Further, officers “may perform a protective frisk of a suspect where the officer has reasonable suspicion that the suspect is armed.” *State v. Cothran*, 115 S.W.3d 513, 2003 Tenn. Crim. App. LEXIS 104, No. W2002-00485-CCA-R3-CD, 2003 WL 402787, at *6 (Tenn. Crim. App. at Jackson, Feb. 14, 2003).

Additionally, in Tennessee, the plain view doctrine applies when: (1) the objects seized were in plain view; (2) the viewer had the right to be in position for the view; (3) the discovery of the seized object was inadvertent; and (4) the incriminating nature of the object was immediately apparent. *State v. Hawkins*, 969 S.W.2d 936, 938 (Tenn. Crim. App. 1997). Plain view provides officers with probable cause to search the defendant more thoroughly than a mere protective frisk. *State v. Gifford*, 2003 Tenn. Crim. App. LEXIS 867, No. E2002-01233-CCA-R3-CD, 2003 WL 22330327, at *23 (Tenn. Crim. App. At Knoxville, Oct. 13, 2003) (citing *State v. Jackson*, 889 S.W.2d 219, 221 Tenn. Crim. App. 1993).

In *Minnesota v. Dickerson*, the United State Supreme Court held that if an officer detects contraband through the sense of touch during a valid *Terry* frisk, the officer may seize the contraband. *State v. Bridges*, 963 S.W.2d 487 (citing *Minnesota v. Dickerson*, 508 U.S. 366, 113 S. Ct. 2130, 124 L. Ed. 2d 334 (1993)). Based on the decision in *Dickerson*, seizure of contraband under the “plain feel” doctrine is appropriate if: (1) a prior valid reason exists for the intrusion, i.e., the pat down must be permissible under *Terry*; (2) the contraband is detected while the *Terry* search for weapons is legitimately still in progress; and (3) the incriminating nature of the object perceived by the officer’s sense of touch is immediately apparent giving the officer probable cause to believe the object is contraband prior to its seizure. *Dickerson*, 508 U.S. at 376. 113 S.Ct. at 2137.

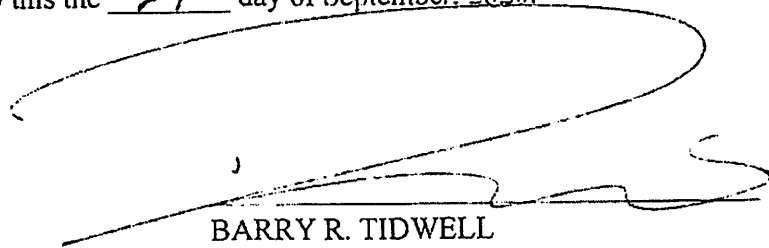
In this case, Detective Hall was patrolling a high crime area in the late evening hours when he came across the Defendant sitting alone in his vehicle with the lights on. Upon approaching the passenger side of the vehicle, the detective observed a glass jar of marijuana in the center console of the vehicle and smelled the odor of marijuana. As a result, the plain sight and smell of marijuana provided Detective Hall with reasonable suspicion to believe that a criminal offense had occurred. Additionally, the contraband in plain view provided Detective Hall with probable cause to conduct more than just a mere protective frisk of the Defendant. Because the plain view doctrine extends the scope of a search when contraband is plainly observed by law enforcement, Detective Hall has sufficient probable cause to justify searching the Defendant’s person for both weapons and contraband.

CONCLUSION

Detective Hall was justified in conducting a search of the Defendant’s person in pursuit of both weapons and contraband. Not only was Defendant sitting alone in a vehicle in a high

crime area late at night, the glass jar of marijuana and odor of marijuana was evidence of contraband in plain view that gave rise to probable cause to sufficiently support a search of Defendant's person. As such, Detective Hall's search of the Defendant for weapons and contraband did not violate the Defendant's constitutional right to be free from unreasonable searches and seizures. Therefore, the Court respectfully DENIES the Defendant's Motion to Suppress.

It is SO ORDERED this the 24 day of September, 2020.



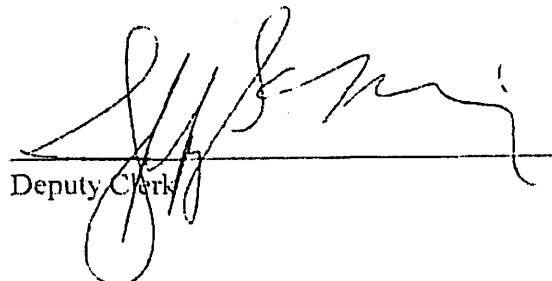
BARRY R. TIDWELL
Circuit Court Judge, Division III

CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the foregoing has been sent this the 24th day of September, 2020, via U.S. Mail to the following:

Ryan Williams
Attorney for the Defendant
1308 Rosa L. Parks Blvd.
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Deputy Clerk

IN THE CIRCUIT COURT FOR RUTHERFORD COUNTY, TENNESSEE
AT MURFREESBORO

FILED

SEP 14 2020

MELISSA HARRILL
DEPUTY CLERK

STATE OF TENNESSEE,)
)
Plaintiff,)
)
vs.)
)
JEREMIE WIX,)
)
Defendant.)

Case No. 80416

ORDER

This matter is before the Court upon the State’s Motion to Show Cause. In the State’s Motion, the Defendant, Jeremie Wix, is accused of 235 instances of contemptuous conduct. The State contends that the Defendant attempted to contact, or did in fact contact, the alleged victim on 235 occasions in violation of this Court’s Order entered on March 25, 2020. The Court conducted a hearing on the issues on August 28, 2020 and has reviewed a series of jail calls and video visitations between the Defendant and others, including the alleged victim in the case. The Defendant argues that he did not have notice of the Court’s Order entered on March 25, 2020. After considering the proof, the Court hereby finds that the Defendant had adequate notice of the Order and finds the Defendant guilty of 235 Counts of criminal contempt.

LEGAL STANDARD

Under Tennessee Code Annotated § 29-9-102, the Court has the power to inflict punishment for contempt. Convictions for criminal contempt are punitive in nature and “their primary purpose is to vindicate the court’s authority.” *Long v. McAllister-Long*, 221 S.W.3d 1, 12 (Tenn. Ct. App. 2006). A person charged with criminal contempt enjoys a presumption of innocence and must be found guilty beyond a reasonable doubt. *Id.* at 13 (citing *Black v. Blount*, 938 S.W.2d 394, 398 (Tenn. 1996)).

There are three elements to criminal contempt: (1) a court order; (2) the defendant's violation of that order; and (3) proof that the defendant willfully violated that order." *Pruitt v. Pruitt*, 293 S.W.3d 537, 545 (Tenn. Ct. App. 2008) (quoting *Foster v. Foster*, No. M2006-01277-COA-R3-CV, 2007 Tenn. App. LEXIS 796, 2007 WL 4530813, at *5 (Tenn. Ct. App. Dec. 20, 2007)). In the context of criminal contempt, willfulness requires that an act be "done voluntarily and intentionally and with the specific intent to do something the law forbids." *Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 249 S.W.3d 346, 357 (Tenn. 2008) (quoting *State v. Braden*, 867 S.W.2d 750, 761 (Tenn. Crim. App. 1993)).

A person found guilty of criminal contempt may be imprisoned for up to ten (10) days for each offense, fined \$50, or both. Tenn. Code Ann. § 29-9-103. This Court recognizes that the Supreme Court of Tennessee has "cautioned that criminal contempt charges should be used sparingly." *State v. Beeler*, 387 S.W.3d 511, 520 (Tenn. 2012) (citing *Robinson v. Air Draulics Engineering Co.*, 214 Tenn. 30 (Tenn. 1964)).

Additionally, Rule 49 of the Tennessee Rules of Criminal Procedure requires service upon "every other party" of written motions (other than *ex parte* motions) and court orders required by their terms to be served upon the parties. Tenn. R. Crim. P. 49(a)(1). Rule 49 further provides that "[w]hen the law, these rules or a court order requires or permits service to be made on a party represented by an attorney, the service shall be made on the attorney unless service on the party in person is required by law or is ordered by the court." Tenn. R. Crim. P. 49(b)(1). The permissible methods of service include mailing a copy to the attorney's last known address. Tenn. R. Crim. P. 49(b)(2)(B).

Tennessee law is well-settled "that knowledge obtained by an attorney during the course and scope of his or her representation of a particular client is conclusively imputed to the client

as a matter of law.” *Boote v. Shivers*, 198 S.W.3d 732, 742 (Tenn. Ct. App. 2005) (citing *Bellar v. Baptist Hosp., Inc.*, 559 S.W.2d 788, 789 (Tenn. 1978)). Further, a “person generally is held to know what his attorney knows and should communicate to him, and the fact that the attorney has not actually communicated his knowledge to the client is immaterial.” *Smith v. Petkoff*, 919 S.W.2d 595, 597-598 (Tenn. Ct. App. 1995).

For instance, in *Howell v. Smithwick*, the Court found that the mother was properly served with the motion for criminal contempt because service upon the mother’s attorney constituted service upon her. *Howell v. Smithwick*, 2017 Tenn. App. LEXIS 71, No. E2016-00628-COA-R3-CV, 2017 WL 438620, at *7 (Tenn. Ct. App. Feb. 1, 2017). Once it has been established that the attorney obtained the relevant knowledge during the course of representing the client, “the constructive notice thereof to the client is conclusive, and cannot be rebutted by showing that the attorney did not in fact impart the information so acquired.” *Petkoff*, 919 S.W.2d at 597-98.

ANALYSIS

Here, the Court finds that the Defendant received adequate notice of this Court’s March 25, 2020 Order. This Court entered an Order on March 25, 2020 prohibiting the Defendant from phone communications to or from any phone numbers other than that of his lawyer or lawyer’s staff.¹ This Court specifically ordered the Defendant to have no further communication, either direct or indirect, with the alleged victim. Ex. 2, ¶ 1-2. The Order was mailed to the Defendant’s attorney and to Sergeant Kenneth Zook of the Rutherford County Adult Detention Center.

¹ An Order of Adjudication and Final Disposition was entered by the Juvenile Court of Sumner County, Tennessee on June 7, 2019 prohibiting any contact whatsoever with the alleged victim. Ex 1, ¶ 8. For purposes of this Order, the Court focuses its attention on the March 25, 2020 Order issued by this Court.

Sergeant Zook testified that he took the Order to the Defendant and apprised him of the Order's contents. Moreover, the fact that the Certificate of Service on the March 25, 2020 Order issued by this Court clearly indicates that it was sent to the Defendant's attorney leads to a conclusive finding that knowledge of the Order was imputed on the Defendant. As such, the Court finds that the Defendant received adequate notice of this Court's March 25, 2020 Order prohibiting him from contacting the alleged victim.

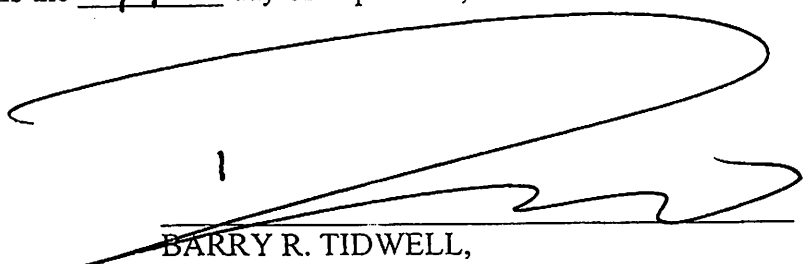
Further, the Court finds beyond a reasonable doubt that the Defendant willfully violated the aforementioned Order. On July 10, 2020, the Defendant contacted his mother to get a phone number for the alleged victim. Ex. 7. On the same day, he used the phone number to contact the alleged victim. The phone conversation between the Defendant and the alleged victim was captured in a jail call which was presented to the Court. *Id.* In the recording of the jail call from July 10, 2020, the Defendant and alleged victim discussed using alternative names to identify themselves, with the alleged victim rejecting the Defendant's proposition that she go by "Susan" and instead requesting that he call her "Emily." *Id.* The jail call recording also reveals the Defendant instructing the alleged victim to "just change that [expletive] again and call me." *Id.*

The Defendant's conversation not only shows a clear violation of this Court's March 25, 2020 Order, it also lends a strong inference to the fact that the Defendant was aware of the prohibition against contacting the alleged victim. Defendant's conversations with the alleged victim also show that the Defendant sought to circumvent the prohibition against contact by obtaining the alleged victim's changed phone number and instructing her to change her number again if necessary. The jail calls and video visitations plainly show that the Defendant succeeded in contacting the alleged victim on multiple occasions in violation of this Court's March 25, 2020 Order.

In reviewing the exhibits introduced at the hearing, including jail calls and video visitations by the Defendant to the alleged victim and others, arguments made by counsel, and other proof before the Court, the Court finds that all of the elements of criminal contempt have been proven beyond a reasonable doubt. First, this Court entered a valid court order on March 25, 2020 prohibiting all contact between the Defendant and the alleged victim. Next, recordings of jail calls and video visitations indicate that the Defendant made contact with the alleged victim on thirty (30) separate days, often making contact with her multiple times on single days. Finally, language captured on recorded conversations from jail calls and video visitations demonstrates that Defendant willfully violated the Order. He discussed using fake names with the alleged victim for discretion and encouraged her to continually change her phone number in order to maintain contact.

Accordingly, the Court finds the Defendant guilty of 235 counts of criminal contempt and sentences the Defendant to 2,350 days, all of which is to be suspended except for 300 days. The sentence of 300 days is to be served consecutively and represents ten (10) days for each date the Defendant made contact with the alleged victim. The remaining 2,050 days representing the suspended sentence shall be unsupervised. It should be noted that this Court made its determinations in an effort to comply with the Tennessee Supreme Court's advice that criminal contempt be used sparingly while also protecting the Court's integrity.

IT IS SO ORDERED this the 14th day of September, 2020.



BARRY R. TIDWELL,
Circuit Court Judge, Division III

CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the foregoing has been delivered to the following:

District Attorney's Office
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McCarter East, PLLC
Attn: Brock East, Esq.
316 West Main Street
Murfreesboro, TN 37130

Rutherford County Adult Detention Center
Attn: Sgt. Kenneth Zook
940 New Salem Highway
Murfreesboro, TN 37129

On this _____ day of September, 2020.

Deputy Clerk