

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

Name: Larry J. Wallace

Office Address: Dickson County Courthouse Annex
(including county) 4 Court Square, Suite 205
Charlotte, Tennessee 37036

Office Phone: 615-789-7013 Facsimile: 615-789-4230

Email Address: [REDACTED]

Home Address: [REDACTED]
(including county) Dover, Tennessee 37058
Stewart County

Home Phone: [REDACTED] Cellular Phone: [REDACTED]

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 for the 23rd Judicial District. The district serves five counties: Cheatham, Dickson, Houston, Humphreys and Stewart. As a circuit judge, I exercise both criminal and civil jurisdiction.

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

1993

BPR No. 016328

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, BPR No. 016328

October 1993

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).

September 2006-Present: Circuit Court Judge-23rd Judicial District-I currently serve as a Circuit Court Judge for the 23rd Judicial District, which includes Cheatham, Dickson, Houston, Humphreys and Stewart Counties. Presiding Judge of Circuit: 2009-11; 2014-16; 2020-Present.

In our district, the other two Circuit Court judges and I handle both criminal and civil cases at all times and sit in both Circuit and Chancery Court. In August 2006, I was elected to this position in a contested general election for an eight year term. In August 2014, I was unopposed and reelected to this position for another eight year term.

January 1999-September 2006: Owner-Partner, Wallace & Barnes, Attorneys at Law, Clarksville and Dover, Tennessee: Practiced criminal and civil litigation in federal district court & state appellate, circuit, chancery and general sessions courts. Provided legal services for clients in cases involving criminal law, commercial/contract litigation, real estate, personal injury, bankruptcy, estates and school law.

August 1995-January 1999: Partner-Associate, Parker, Riggins & Wallace, Attorneys at Law, Clarksville, Tennessee: Practiced criminal and civil litigation in federal district court & state appellate, circuit, chancery and general sessions courts. Provided legal services for clients in cases involving criminal law, commercial/contract litigation, real estate, personal injury, bankruptcy, estates and school law. Drafted legislation and lobbied for change in the law, T.C.A. § 9-8-307, regarding the manner in which the State of Tennessee is sued for personal injuries. Proposed bill was enacted into law and affected outcome of client's case in a positive manner.

January 1994-August 1995: Attorney-Lobbyist, Tennessee School Boards Association, Nashville, Tennessee: Served as attorney and lobbyist for the Tennessee School Boards Association (TSBA). Provided legal assistance and representation to 139 school boards in Tennessee. Conducted termination and transfer hearings. Lobbied and drafted legislation in the Tennessee State Legislature for two legislative sessions. Presented legal seminars and training to school board members, superintendents, administrators and board attorneys. Edited and published the *Tennessee School Lawyer*. Wrote informative legal articles for school board journals.

May 1993-January 1994: Attorney-Associate, Taylor, Philbin, Pigue, Marchetti & Bennett, Nashville, Tennessee: Entered legal profession and practiced civil litigation in state circuit, chancery and general sessions courts. Provided legal services for clients in cases involving insurance defense, personal injury, employment, workers' compensation, creditors' collection and entertainment.

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.

Circuit Judges in the 23rd Judicial District preside over criminal and civil cases filed in the Circuit and Chancery Courts of Cheatham, Dickson, Houston, Humphreys and Stewart Counties. I would estimate that 65% of the cases I have handled as a Circuit Court Judge have been criminal cases. The criminal cases have consisted of felonies and misdemeanors originating in Circuit Court as well as appeals from General Sessions Courts, Juvenile Courts and Municipal Courts. The remaining 35% of the cases have involved civil cases, mainly domestic matters. In addition, I handle other duties such as impaneling the grand jury, issuing subpoenas and search warrants.

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 third year of law school, I was able to secure employment with the insurance defense firm of Taylor, Philbin, Pigue, Marchetti & Bennett, Nashville, Tennessee, as an associate. During this time, there was a recession ongoing and it was difficult to obtain employment. So, I was thankful for the opportunity. I began working there after law school graduation in May 1993. I went to court a few times before the bar results were distributed in October 1993. After I became licensed in October 1993, I tried many civil cases for the firm as an attorney in general sessions courts.

Near the end of 1993, I was approached by Tennessee School Boards Association (TSBA), Nashville, Tennessee, about an opening for their attorney and lobbyist position. It was also an increase in salary. So, I accepted their offer and began working for TSBA near the end of 1993 and beginning of 1994. I immediately started answering legal questions and rendering advice to all 139 school systems across the state. In addition, I began lobbying at the Tennessee State Legislature regarding proposed bills that affected schools. Also, I began drafting legislation to be proposed as bills in the legislature. This was all very exciting work to me. As the months passed, I began presenting legal seminars and training to school board members, superintendents, other administrators and board attorneys. Moreover, I began editing and publishing the *Tennessee School Lawyer* on a quarterly basis and writing legal articles for school board journals. As time went on, I also traveled across the state helping school boards conduct termination and transfer

hearings of employees.

A few months after concluding my second year of lobbying for TSBA, I was approached about another job opportunity. In August 1995, a former partner of a law firm that I had clerked for asked me if I was interested in getting involved on the ground floor of a brand new firm. I left TSBA to become a senior associate at the new law firm of Parker and Riggins in Clarksville, Tennessee. While at this firm, I provided legal services for clients in cases involving criminal law, commercial/contract litigation, real estate, personal injury, bankruptcy, estates and school law. After about 1.5 years of very hard work, I was made a partner in the firm of Parker, Riggins & Wallace.

In January 1999, an opportunity was presented to me for the purchase of a building in downtown Clarksville. An attorney friend and I purchased the building and opened the law firm of Wallace & Barnes. While at this new firm, I provided the same legal services for clients in cases involving criminal law, commercial/contract litigation, real estate, personal injury, bankruptcy, estates and school law as I had previously. In 2004, I opened a satellite law office in Dover, Tennessee, that proved to be very successful.

In August 2004, I ran for Stewart County General Sessions Court Judge. The seat had been vacated a year earlier and a local attorney had been appointed in said seat. Thus, the appointee had to be elected the following year in order to finish the term. Unfortunately, I lost the election even though I had worked very hard. But, I can say I lost to a very fine person. I continued to build my law practice for the next two years.

In 2006, Circuit Court Judge Leonard Martin announced his retirement and I decided to run for the open seat. On August 3, 2006, after a very hard-working campaign, I was elected to the seat as a Circuit Court Judge for the 23rd Judicial District, Div. II and sworn in on September 1, 2006. Interestingly enough, I had run for this seat from the second smallest county in the circuit and was able to garner almost half the total votes cast against three other opponents from the two biggest counties in the circuit. Upon election to the bench, I closed down my firm. Since 2006, I have served as a Circuit Court Judge in Cheatham, Dickson, Houston, Humphreys and Stewart Counties. In August 2014, I was unopposed and reelected to this position for another eight year term.

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

Wallace v. State of Tennessee, Tennessee Claims Commission, No. D97003612

Wallace v. Perry, Montgomery County Circuit Court, Case No. C11-670

These matters involved a personal injury case that occurred on July 20, 1995. I represented the plaintiff while I was in the private practice of law. The plaintiff had been in a motor vehicle accident where the defendant had run a stop sign. The plaintiff sustained significant injuries (fractured neck and back). The defendant was in his own private vehicle and had no markings on the vehicle indicating anything other than a private vehicle. I settled with the defendant's private insurer on the property damage and began negotiations with them on the personal injuries. However, no agreement was able to be reached on the personal injuries. By this time, several

months had elapsed and a lawsuit was filed in Montgomery County Circuit Court against the defendant.

Unfortunately, the defendant had moved and service of process had to be reissued several times in order to locate the defendant. By the time the defendant was served, more than a year had elapsed since the accident. Shortly thereafter, the State of Tennessee filed pleadings in Montgomery County Circuit Court arguing that because the defendant was a state employee and on state business, the proper forum was the Tennessee Claims Commission and requested the case be dismissed. However, there was no mechanism to transfer said case to the Claims Commission. Instead, an original filing would have had to be filed in the Claims Commission and there was a 1 year statute of limitation that would have applied. In effect, my client had no avenue to pursue her personal injury claim. During this time, I filed a claim with the Claims Commission and requested continuances in the Claims Commission case and the Montgomery County Circuit Court case while I reviewed the situation. The continuances were granted.

Subsequently, I drafted legislation to amend the statute to require a timely filed case in a court of competent jurisdiction to be transferred to the Claims Commission and be considered filed as of the filing date in the court of competent jurisdiction. Once I drafted the bill, I was able to obtain sponsors in both chambers of the Tennessee State Legislature. After which, I lobbied the bill at the legislature and with the help of many people and prayers was able to obtain its passage on April 22, 1998, in Public Chapter 785 of the 100th General Assembly. Thus, T.C.A. § 9-8-307 (h)(i)(1) was amended to require transfer of a case from a court of competent jurisdiction to the Claims Commission for any pending case that had been filed where the cause of action had arisen on or after July 1, 1995.

Shortly thereafter, my client's case was transferred from Montgomery County Circuit Court to the Tennessee Claims Commission and was then consolidated with the pending case previously filed in the Tennessee Claims Commission. After a few months of depositions and interrogatories, the case was finally brought to conclusion with a satisfactory settlement for my client. This particular matter stands out because this amendment to the law corrected an unfair law in its application to situations and people. As an anecdotal note, there was another very experienced attorney that was encountering a similar situation as mine at the same time with his client and was supporting me every step of the way.

State v. Buckner, Montgomery County Circuit Court, Case No. 35474 (1995)

This matter involved my first murder case as an attorney, wherein, I was appointed to represent the 20 year-old defendant. The defendant was charged with second-degree murder and several counts of attempted second-degree murder. It was a gang-related situation. Shortly before trial, the defendant entered into a plea agreement. In the process of my representation, the defendant and I talked a lot about life and the decisions we make and the consequences they bring. In addition, we discussed the fact that people can change their pathways. This case stands out for what the defendant had to overcome to become a productive member of society. The defendant was released in 2007 and has founded his own barber business as well as an adolescent outreach nonprofit organization.

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.

State v. Jarman, Dickson County Circuit Court, No. 2015-CR-585 (2015)

This case was a jury trial over which I presided. This was a murder case involving a female victim that was shot and killed by her boyfriend, the defendant. The defendant claimed that the victim died of a self-inflicted gunshot wound under her armpit and later made other inconsistent statements as to the manner of her death. The defendant was charged with first degree murder. The case proceeded to trial and the defendant was convicted of the lesser included offense of voluntary manslaughter. I sentenced the defendant to a 5 year sentence of incarceration. During the trial, I allowed the jury to hear evidence of a recent prior bad act (per Tennessee Rule of Evidence 404 (b)) by the defendant, wherein, he had been arrested for physically abusing the victim. The prior abuse case, though, had resulted in an acquittal at trial after the victim had recanted her earlier statements to the police regarding said abuse. The defendant appealed his conviction and sentence. The Tennessee Court of Criminal Appeals reversed the trial court's judgment and conviction based on my ruling that allowed the aforementioned prior bad act evidence to be heard by the jury (considering the acquittal at trial). State v. Jarman, No. M2017-1313-CCA-R3-CD, 2018 WL 5885903 (Tenn. Crim. App. Nov. 8, 2018). The State of Tennessee appealed to the Tennessee Supreme Court. The Tennessee Supreme Court essentially ruled that there are limited circumstances where evidence of a prior bad act (even where there is an acquittal at trial) should be allowed to be heard by the jury and this case was one of those situations. State v. Jarman, No. M2017-01313-SC-R11-CD, 604 S.W.3d 24 (Tenn. July 6, 2020). In conclusion, the Tennessee Supreme Court reversed the Tennessee Court of Criminal Appeals and reinstated the trial court's judgment and conviction in this case.

State v. Reeder, Cheatham County Circuit Court, No. 16157 (2013)

This case was a jury trial over which I presided. The defendant was charged with child rape and aggravated sexual battery. The victim was a neighbor's child. The defendant was convicted on all counts. I sentenced the defendant to an effective 35 year sentence. This was one of the first cases in Tennessee's courtroom history in which a child-victim was accompanied by a trained courtroom dog for comfort and emotional security as she testified in front of the jury. The dog was initially seen by the jury when the child-victim was sworn, but otherwise was not able to be observed by the jury. There was some regional media attention regarding the courtroom dog's appearance in a Tennessee courtroom. The convictions and the sentence were affirmed on appeal.

State v. Garrett, Dickson County Circuit Court, No. 2008-CR-171 (2008)

This case was a trial over which I presided. This was a murder case involving 2 foster teenaged children that shot and killed their foster mother and her mother-in-law at point-blank range in the

head while they slept. The case received some national media attention. The defendant was charged with 2 counts of second-degree murder. The defendant signed a jury waiver form and I tried the murder case as a bench trial. The defendant was not the shooter, but was convicted of 2 counts of facilitation of second-degree murder for supplying the murder weapon. I sentenced the defendant to an effective 20 year sentence. The convictions and the sentence were affirmed on appeal.

State v. Braddock, Houston County Circuit Court, No. 4736 (2007)

This was the first murder trial I presided over as a judge after being elected. The defendant in this case was charged with first-degree murder of his wife involving a gunshot wound to her head. The case received local media attention. The defendant testified during the jury trial and was not very persuasive. The jury convicted the defendant of first-degree murder and I sentenced him to life in prison. The conviction and the sentence were affirmed on appeal.

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.

As an attorney in private practice, I was appointed on a few cases as guardian ad litem in conservatorship matters and juvenile court matters.

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

I was previously assigned by the Tennessee Supreme Court to sit for Judge Jerry L. Smith on the Tennessee Court of Criminal Appeals-Middle Division. To that effect, I wrote the appellate opinion in State v. Davis, Case No. M2013-01903-CCA-R3-CD, 2015 WL 1275369 (Tenn. Crim. App. at Nashville, March 18, 2015) (attached).

As a judge, I have handled over 25,000 criminal and civil cases (the vast majority have been criminal), including several hundred jury trials. In addition, I have handled a few cases by interchange from the 19th, 21st, 24th and 31st Judicial Districts.

In 2006, I successfully completed the Tennessee Judicial Academy in Nashville, Tennessee (presented by the Tennessee Judicial Conference).

In 2007, I successfully completed Managing the Capital Case-Training for Trial Judges on Handling Death Penalty Cases (presented by the National Judicial College/Tennessee Judicial Conference).

In 2008, I successfully completed the two week General Jurisdiction Course for Judges at the National Judicial College in Reno, Nevada (presented by the National Judicial College).

In 2010, I successfully completed Computer Forensics in Court-Training for Trial Judges (presented by the National Computer Forensics Institute-U.S. Secret Service).

Since 2006, I have attended approximately 40 Tennessee Judicial Conferences learning many principles that have enriched my legal knowledge and experience.

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.

On May 28, 2014, I previously applied for an opening on the Tennessee Court of Criminal Appeals-Middle Grand Division. On June 10, 2014, the Governor's Commission for Judicial Appointments interviewed all the candidates. The voting results of the candidates were released and I was tied with another candidate for the most votes from the Commission. In conclusion, I was then submitted as a nominee to Governor Bill Haslam.

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.

1986-1988; Murray State University, Murray, Kentucky. I attended Murray State out of high school. I was an English major. During my freshman year, I was able to maintain a 4.0 grade point average. After my freshman year, I was accepted to the University of Notre Dame. However, due to cost issues, I decided to reapply the following year. During my sophomore year, I was able to continually maintain the 4.0 grade point average. After my sophomore year, I was again accepted to the University of Notre Dame. As one of my dreams was to graduate from Notre Dame, I left Murray State to fulfill that dream.

1988-1990; University of Notre Dame, College of Business, South Bend, Indiana. B.B.A. Degree, May 1990. Business Administration major (The Mendoza College of Business is always ranked near the top for best undergraduate business school). Upon enrolling at Notre Dame, I switched my major from English to business. My thought process was that it would be easier to obtain a job with a degree in business if I did not complete law school. Upon entry at Notre Dame, every student is required to sign a statement of oath that they will not participate in or tolerate academic dishonesty. To ensure compliance with this oath, Notre Dame has an academic honor code board. While at Notre Dame, I was selected by the faculty to serve on the academic honor code board. This board was comprised of faculty and students. The board's responsibility was to conduct hearings to determine if any academic violations had occurred. Upon a finding of academic violations, the board would decide on the punishment, which could include expulsion. In addition, I was selected to serve as a judicial board chairperson under the student residence life department. This board heard violations occurring in residence halls/dorms by students. Upon a finding of violations, the board would decide on the punishment, which could include

eviction from the university residence.

1990-1991; Florida State University-College of Law, Tallahassee, Florida. I attended law school at Florida State University out of college. I decided upon completion of my first year of law school that I wanted to come back home to Tennessee and practice law. In addition, there were increasing concerns over the cost of attending law school in Florida for three years. Subsequently, I was accepted to the University of Tennessee College of Law as a second year law student.

1991-1993; University of Tennessee-College of Law, Knoxville, Tennessee. J.D. Degree, May 1993. While I was still in law school at the end of my second year, the University of Tennessee Office of Student Judicial Affairs selected three rising third year law students to be employed with their office. One student was designated the defender for the students and the other two were selected to be the university prosecutors. These annual positions were highly sought because of free tuition for that third year and a monthly stipend that began during the summer preceding the third year and continued until graduation. I was selected as one of the three and designated as a prosecutor. My job was to prosecute any crimes committed by university students that occurred on university properties, including academic dishonesty. We conducted these student hearings in front of a tribunal made up of faculty and students (similar to a jury). The greatest form of punishment was expulsion, with the least form of punishment being a written warning. In addition, I served as a member on the moot court board and received an award for outstanding achievement and proficiency in appellate argument.

PERSONAL INFORMATION

15. State your age and date of birth.

52; [REDACTED] 1968.

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

Except for the years in college and law school, 49 years.

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

17 years.

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

Stewart.

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

None.

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

During my 13 years of attorney practice, I had 2 complaints filed against me in which I had to respond. Both complaints were dismissed administratively after my responses. During my 14 years as a judge, I have had 3 complaints filed against me in which I had to respond. Said complaints were dismissed administratively after my responses.

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.

I have had 4 cases involving me as a party.

(1) 1999, Wallace v. Ladd, Montgomery County General Sessions Court-I was owed legal fees by a client that resulted in me referring the case to another attorney for collection. The case was resolved shortly after a lawsuit was filed;

(2) 2001, Barnes, et al., v. Grange Mutual Casualty Co., Montgomery County Circuit Court-My law partner and I sued our insurance carrier over a disagreement in our coverage as it related to the Clarksville Tornado and the property damage our law office suffered. We were represented by an attorney not associated with us. The case was resolved before a trial;

(3) 2010, McElyea v. Wallace, et al., U.S. District Court, M.D. Tennessee, Case No. 3:10-CV-00655, Acting in my judicial capacity, I placed a father of two in jail for 180 days that had not paid consistent child support for approximately 20 years. Subsequently, the father filed a federal lawsuit against the clerk, the attorneys representing the mothers and myself. Said case was dismissed without me having to respond;

(4) 2011, Mayberry v. Humphreys County, et al., U.S. District Court, M.D. Tennessee, Case No. 3:11-CV-855, In this case, the plaintiff alleged that he was not receiving proper medical care while he was housed in jail. Subsequently, the plaintiff filed a federal lawsuit against the county, the sheriff, several others and myself. Said case was dismissed without me having to respond.

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.

Dyers Creek Church, 2018-Present;

Member, Dover Kiwanis Club, 2004-Present;

Grace Baptist Church, 2015-2017;

Member/Past President, Stewart County Chamber of Commerce.

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.

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

Tennessee Judicial Conference, Member (2006-Present);

Tennessee Trial Judges Association, Member (2006-Present);

Tennessee Judicial Conference Legislative Committee, Member and Vice-Chair: Responsible for tracking legislative bills, reviewing and addressing proposed legislation that impacts the judiciary, consulting with legislators and conducting meetings at state judicial conferences (2008-Present);

Tennessee Judicial Conference Criminal Pattern Jury Instructions Committee, Member (2012-Present);

Tennessee Judicial Conference Education Committee, Member (2019-Present);

Tennessee Judicial Conference Courtroom Security Committee, Member (2008-10);

Tennessee Bar Association, Member;

Dickson County Bar Association, Member;

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.

Board Member, The Tennessee Judicial Conference Executive Board, Administrative Office of the Courts, Nashville, Tennessee; 2019-Present; Responsible for addressing issues (including work-related and budgetary), which affect all judges in Tennessee and fulfilling other functions as deemed necessary by the Tennessee Supreme Court and the Conference.

Officer-Treasurer, The Tennessee Judicial Conference Executive Board, Administrative Office of the Courts, Nashville, Tennessee; 2018-19; Responsible for preparing and managing the financial affairs of the state judicial conference and performing related duties.

Officer-Secretary, The Tennessee Judicial Conference Executive Board, Administrative Office of the Courts, Nashville, Tennessee; 2015-16; Responsible for transcribing and preparing official minutes and attendance records of the state judicial conference meetings throughout Tennessee and performing various other tasks.

Executive Board Member, Tennessee Trial Judges Association, Administrative Office of the

Courts, Nashville, Tennessee; 2015-17; Responsible for addressing issues which affect trial judges in Tennessee and fulfilling other functions.

Board Member-Judicial Resource Study Committee, Tennessee Trial Judges Association, Administrative Office of the Courts, Nashville, Tennessee; 2017; Responsible for addressing issues and publishing a written report regarding how judicial resources are distributed and allocated in Tennessee trial courts.

Board of Governors-Tennessee Bar Association.

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

While I was at the Tennessee School Boards Association in 1994 and 1995, my duties included publishing and editing a quarterly edition of the *Tennessee School Lawyer* and articles in the *Tennessee School Board Journal*.

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.

None within the last 5 years.

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.

August 2004-Stewart County General Sessions Court and Juvenile Court Judge; Lost in election

August 2006-Circuit Court Judge, 23rd Judicial District, Div. II; Won in contested election

On May 28, 2014, I previously applied for an opening on the Tennessee Court of Criminal Appeals-Middle Grand Division. On June 10, 2014, the Governor's Commission for Judicial Appointments interviewed all the candidates. The voting results of the candidates were released and I was tied with another candidate for the most votes from the Commission. In conclusion, I was then submitted as a nominee to Governor Bill Haslam; Lost in Governor appointment

August 2014-Circuit Court Judge, 23rd Judicial District, Div. II; Reelected in uncontested election

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

Yes. Lobbied and drafted legislation for Tennessee School Boards Association in the Tennessee State Legislature for two legislative sessions in 1994 & 1995.

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.

State v. Davis, Case No. M2013-01903-CCA-R3-CD, 2015 WL 1275369 (Tenn. Crim. App. at Nashville, March 18, 2015) 80%

State v. Covington, Cheatham County Circuit Court (Criminal Division), Case No. 2014-CR-17354-100%

State v. Ray, Stewart County Circuit Court (Criminal Division), Case No. 2014-CR-18-100%

State v. Benesch, Dickson County Circuit Court (Criminal Division), Case No. 2013-CR-234-100%

Public Chapter 785, Section 32 (i)(1) (House Judiciary Committee Amendment No. 2), 100th Tennessee General Assembly-95%

ESSAYS/PERSONAL STATEMENTS

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

I originally became a lawyer to try to make a difference in the lives of people for the better. As a Circuit Court Judge, I have tried to do the same in the five counties I serve. I believe I have been successful in having a positive impact. As an appellate judge, I would try to do the same for the entire state. In addition, I believe I am prepared for a new challenge that a criminal appeals judge would bring. Moreover, in my circuit, I might have a murder case, divorce case, boundary line dispute case and a personal injury case all in the same month. The criminal appeals judgeship would give me an opportunity to really focus on one area of the law. I would immensely enjoy that aspect. In addition, it would give me a chance to apply my legal skills to serve the residents of the entire state instead of just my circuit.

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)*

As a judge, I have appointed indigent litigants legal counsel in thousands of cases (civil and criminal). As a lawyer and judge, I have provided pro bono legal services to churches and other charitable organizations with various legal issues. As a judge, I have presented at many high schools and civic organizations on how the judicial system works. The purpose of those presentations has been to help people understand the legal system better. As a lawyer, I provided free legal services when I helped create and establish a scholarship foundation for Clarksville Gas & Water employees' dependents and advised them in the following years. As a lawyer, I accepted many appointments in criminal cases, juvenile cases and cases involving termination of parental rights. As a lawyer, I represented many clients at reduced fees in order for them to have legal representation. As a lawyer, I presented seminars to the elderly regarding pertinent issues to them.

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)*)

The Court of Criminal Appeals has twelve judges that cover the state of Tennessee. These twelve judges are divided equally by the three grand divisions: the Western, Middle and Eastern Sections. Thus, creating four judges for each division or section. However, the judges rotate throughout the state and thereby hold court in each division. My interest is in the Court of Criminal Appeals-Middle Division. With my background as a trial court judge, I believe I could be an asset to the Court of Criminal Appeals. As a final point, if I am selected for this position, I would be the only person in Stewart County's history to have served as an appellate court judge.

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

I have been involved with assisting churches, civic organizations and other charitable organizations over the years. I have been a judge for Vanderbilt University Law School for the mock trial competition. I have been involved with different youth sports programs over the years. I regularly speak to civic organizations regarding legal issues and the legal system. I usually go to schools and speak to students about the judicial system and how it works. I encourage and assist youth groups in visiting the courtrooms during court. After court is over, I discuss with the youth group general observations of what they witnessed and try to answer any questions they may have. Annually, I help promote a father and daughter dance that has grown in much popularity over the years. I have been a consistent sponsor and supporter of Relay for Life. I have been a coach/speaker for the Upward Sports Programs over the years. I have been involved as a volunteer and supporter of various community outreach programs (food ministries, building a handicapped accessible ramp for a disabled person and other charitable programs). Over the years, I have worked with members of the Tennessee Legislature on key issues dealing with the legal system. My plan would be to continue all these activities if my workload allows it.

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)*

At an early age, I was taught that hard work will usually help you accomplish whatever dreams you pursue. I started mowing lawns at a young age. Later, I proceeded to working in grocery stores sacking groceries and mopping floors. During my college years, I worked as a dishwasher and a waiter at restaurants. I would bring this same hard work ethic to the appellate bench.

I was also taught to treat every person the way you would want to be treated. My parents instilled in me the belief that the only time you should look down on anyone is when you are looking down to help pick that person back up. I would bring that same fair attitude to the appellate bench.

Since 2006, I have served as a trial judge whereby I am required to interpret statutes on a daily

basis. I have issued written opinions as well as oral opinions in thousands of cases.

I was a lobbyist for two legislative sessions with TSBA where I had to draft proposed legislation and then lobby for its passage. As a private attorney, I also drafted legislation for a client and lobbied for its passage which affected the client's case in a positive manner. These experiences give me a breadth of knowledge and understanding with interpreting a statute's meaning.

Lastly, the key point about my candidacy is that I have an extensive range of knowledge, experiences and talents that I believe would make me an excellent choice for a criminal appeals judge.

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. As a judge, I had a case where the subsequent facts after the arrest showed that the defendant was clearly driving drunk. However, the proof showed at a hearing that when the police officer stopped the defendant there was no reasonable suspicion to do so. Due to the absence of reasonable suspicion, the case was ultimately dismissed by me prior to trial (even though the defendant had violated the law). In addition, I have had cases as a judge involving contested adoptions and termination of parental rights. In a few of these cases, I believed it would be better for the child if the adoption had been granted and the biological parent's rights be terminated. Nevertheless, I have followed the law and denied the adoption and the termination of rights in those cases where the clear and convincing evidentiary burden was not met (though I privately disagreed with the result).

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. John Griffith, Griffith Law, Attorneys at Law, [REDACTED] Franklin, Tennessee 37067; [REDACTED] Mr. Griffith serves as the President of the Tennessee Trial Lawyers Association.
B. Jeff Bledsoe, Executive Director-Tennessee Sheriffs' Association, [REDACTED] Lebanon, Tennessee 37087; [REDACTED]
C. Edie Stainforth, Humphreys County Circuit Court Clerk, [REDACTED] Waverly, Tennessee 37185; [REDACTED]
D. Dr. Marty Blane, Pharmacist and Dover Municipal Judge, 1307 Donelson Parkway, Dover, Tennessee 37058; [REDACTED] Dr. Blane owns a pharmacy business and serves in his judicial position on designated days.
E. Terry Bailey, State Superintendent, Tennessee Assemblies of God, [REDACTED] Hendersonville, Tennessee 37075; [REDACTED]

AFFIRMATION CONCERNING APPLICATION

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

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the [Court] of Criminal Appeals-Middle Grand Division 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.

Larry J. Wallace

Type or Print Name



Signature

October 2, 2020

Date

016328

BPR #

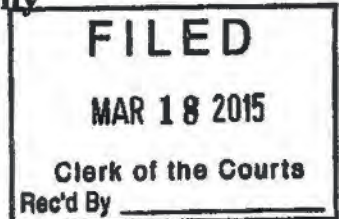
Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
June 17, 2014 Session

STATE OF TENNESSEE v. CHARLES B. DAVIS

Appeal from the Criminal Court for Davidson County
No. 2013-A-180 Cheryl A. Blackburn, Judge

No. M2013-01903-CCA-R3-CD



A Davidson County jury convicted Defendant, Charles B. Davis, of one count of theft of property valued between \$1,000 and \$10,000, one count of theft of property valued under \$500, and one count of employing a firearm during the commission of a dangerous felony. In addition, the Defendant pleaded guilty to one count of aggravated burglary but was acquitted of an additional count of aggravated burglary. The trial court sentenced the Defendant to an effective sentence of twenty years in the Tennessee Department of Correction as a Range II, persistent offender. On appeal, the Defendant asserts that: (1) the trial court erred in denying the Defendant's motion for judgment of acquittal as to Counts 2 and 5 as there was insufficient evidence to support his convictions for theft of property and employing a firearm during a dangerous felony and (2) the trial erred when it denied his motion for new trial because the trial court failed to properly function as the thirteenth juror as the verdicts were against the weight of the evidence. After a thorough review of the record and applicable law, we affirm the trial court's judgments.

Tenn. R. App. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

LARRY J. WALLACE, SP. J., delivered the opinion of the Court, in which NORMA MCGEE OGLE, J., and ROGER A. PAGE, J., joined.

James O. Martin, III (on appeal) and Justin Johnson (at trial), Nashville, Tennessee, for the appellant, Charles B. Davis.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel Harmon, Senior Counsel; Victor S. Johnson, III, District Attorney General; Jeff Burks and Brian Ewald, Assistant District Attorneys General for the appellee, State of Tennessee.

OPINION

I. Background and Facts

This case arose from allegations that the Defendant committed theft of property and aggravated burglary on two separate occasions involving two separate victims. One of the occasions involved employment of a firearm. A Davidson County grand jury indicted the Defendant for two counts of aggravated burglary, one count of theft of property valued between \$1,000 and \$10,000, one count of theft of property valued under \$500, and one count of employing a firearm during the commission of a dangerous felony.

At the April 1-2, 2013 trial on these charges, the parties presented the following evidence: Mary Quinn testified that she was a co-worker and friend of Jennifer Picheco. Ms. Quinn testified that she was to watch Ms. Picheco's cat and home on Claybrook Lane, Nashville, Tennessee, from December 23-27, 2011. On December 27, 2011, Ms. Quinn arrived at Ms. Picheco's home and noticed that it had been burglarized. Ms. Quinn testified that the back door to the home was broken. Ms. Quinn contacted Ms. Picheco regarding said burglary. Upon being contacted by Ms. Quinn, Ms. Picheco and Ms. Quinn, with the police's help, determined what items had been stolen.

Jennifer Picheco testified that she lived on Claybrook Lane, Nashville, Tennessee, and that she went to Connecticut to visit family from December 23-27, 2011. Ms. Picheco testified that she locked her house when she left town on December 23, 2011. She further testified that, in her absence Mary Quinn was to watch her home and her cat. Ms. Picheco testified that she was contacted by Ms. Quinn on December 27, 2011, and learned that her home had been burglarized. Over the telephone, Ms. Picheco worked with Ms. Quinn and the police to determine what items had been stolen. The items included a television, a laptop and jewelry. According to Ms. Picheco, the unrecovered stolen items were worth a total of more than \$1,000.00, but less than \$10,000.00. Some of Ms. Picheco's personal property was recovered, including some of her less expensive rings and necklaces, a laptop, birth certificate, passport and some of her Tiffany jewelry holders (though the holders were empty). The television, purses, bags, and her entire Tiffany jewelry collection were never recovered. Ms. Picheco testified that no one other than Ms. Quinn had permission to enter her home and that no one had permission to take the personal items that were stolen. Ms. Picheco testified that the glass doors in the rear of the home had been broken. She further testified that she did not have any firearms in her residence and that she was not acquainted with the Defendant or his co-defendant.

Lee Ann Lisk testified that she was neighbors with Brook Connor, who resided on Southcrest Street in Nashville. Ms. Lisk testified that on December 29, 2011, at 9:30 a.m., she observed an unfamiliar white SUV parked in an odd fashion, closest to the

street rather than to the house. She further noticed two men knocking on the door and windows of Ms. Connor's home. One man looked around the back of the house and the other man looked around the front of the house. Ms. Lisk testified that it appeared very suspicious. She noticed that one of the men was white and tall with lighter hair and the other was Hispanic and shorter with jet black hair. She had never seen the men before and did not see a weapon. As a result of her observations, Ms. Lisk called the police. While on the phone with the police, Ms. Lisk saw the men get into their SUV and drive it behind the carport, close to the side or back of the house where she could no longer see them. Apparently, according to Ms. Lisk, it was during this time that the men entered Ms. Connor's home because when police arrived, they brought the two men outside from Ms. Connor's home.

Brook Connor testified that she and her husband resided on Southcrest Street in Nashville, Tennessee. Ms. Connor testified she left for work on December 29, 2011, at 7:00 a.m. and received a call from police at 10:00 a.m. regarding a break-in at her house. Ms. Connor left work and returned home to find that three of her doors had been broken and her house was in disarray. Ms. Connor testified that the window panes of the side door coming from the carport were broken and that the door was pushed open. That door led to the basement and the intruders broke through two additional locked doors to access the main part of the house. The intruders also made a hole in the dry wall where, presumably, the door leading to the kitchen was kicked in. No items were taken from her residence. However, her laptop computer, worth \$250.00, that she had left sitting on her living room couch had been moved to the bed in the bedroom. Ms. Connor testified that she had not given anyone permission to enter her home or take her personal belongings from inside her home. She further stated she did not have any firearms in her residence. Ms. Connor testified that the amount of damage done to the doors in her home was \$400.00 to \$500.00.

Sergeant Jason Spencer of the Metro Nashville Police Department testified that he responded to both Ms. Picheco's and Ms. Connor's homes after the break-ins. Sergeant Spencer further stated that both homes were in the same general area of South Nashville within five miles of one another. Sergeant Spencer observed that both homes had been burglarized. Specifically on December 27, 2011, Sergeant Spencer noticed that at Ms. Picheco's home there was a broken glass door and observed where missing items such as the television and jewelry should have been located.

On December 29, 2011, Sergeant Spencer stated that Detective Phillip Klarer, Detective Robert Shotwell, and Detective Andrew Nash assisted in responding to the burglary at Ms. Connor's home. Upon arriving at Ms. Connor's residence, they saw the white SUV reported by Ms. Lisk sitting in the driveway. Sergeant Spencer stated that in response to the burglary at Ms. Connor's home, the police entered into the home through

the side carport door where the intruders had entered. After a thorough search of the home, the Defendant and co-defendant were located hiding in a "false spot" inside the basement. Between the two men, there was a 12-gauge shotgun propped against a guitar case at their feet. No one else was located inside the home. Inside the 2005 white ford expedition (white SUV) registered to the co-defendant, which was parked at Ms. Connor's house, police found Ms. Picheco's laptop, her Tiffany jewelry bags, a hunting rifle, and Ms. Picheco's passport.

After the Defendant was arrested, he saw the detectives looking at the firearms and asked Sergeant Spencer if the two guns police had recovered were listed as stolen. When Sergeant Spencer responded that he did not know yet, the Defendant stated, "Well, they shouldn't be, I bought them from a reliable source." No usable fingerprints were lifted from the weapons.

Detective Nash interviewed the Defendant at the police station and Defendant executed a *Miranda* waiver. Defendant then admitted that he broke into Ms. Connor's house. Defendant denied breaking into Ms. Pechico's house and asserted that Ms. Pechico's personal property was found in a vehicle he did not own. Defendant admitted that he purchased the guns but would not reveal from whom. Defendant further stated, "I mean I'll take the guns, they aren't nothing, I'll take them."

Based on this evidence, the jury acquitted the Defendant in count 1—aggravated burglary, convicted the Defendant in count 2—theft of property valued between \$1,000 and \$10,000, convicted the Defendant in count 4—theft of property valued under \$500, and convicted the Defendant in count 5—employing a firearm during the commission of a dangerous felony. The Defendant had already pled guilty in count 3—aggravated burglary. The trial court sentenced the Defendant to an effective sentence of twenty years in the Tennessee Department of Correction as a Range II, persistent offender. It is from the judgments in Counts 2 and 5 that the Defendant appeals.

II. Analysis

On appeal, the Defendant asserts that: (1) the trial court erred in denying the Defendant's motion for judgment of acquittal because there was insufficient evidence to support his convictions for theft of property and employing a firearm during a dangerous felony and (2) the trial erred when it denied his motion for new trial because the trial court failed to properly function as the thirteenth juror as the verdicts were against the weight of the evidence.

A. Sufficiency of the Evidence

The Defendant asserts that the evidence was insufficient to support his convictions in count 2—theft of property valued between \$1,000 and \$10,000—and count 5—employing a firearm during the commission of a dangerous felony. Specifically, the Defendant argues that there was insufficient evidence to conclude that the Defendant stole, possessed, or even had knowledge of the items belonging to Ms. Picheco that were recovered from his co-defendant's vehicle. The Defendant also asserts that even if the theft conviction in Count 2 were valid, Ms. Picheco's testimony regarding the value of the items discovered in the co-defendant's vehicle mandates that said conviction be reduced to a misdemeanor. Lastly, Defendant argues that there was insufficient evidence that the Defendant employed the shotgun possessed by both defendants inside Ms. Conner's residence. The State responds that the record supports the Defendant's convictions. We agree with the State.

When an accused challenges the sufficiency of the evidence, this Court's standard of review is whether, after considering the evidence in the light most favorable to the State, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); see Tenn. R. App. P. 13(e); *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004) (citing *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002)). This standard applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999) (citing *State v. Dykes*, 803 S.W.2d 250, 253 (Tenn. Crim. App. 1990)).

In the absence of direct evidence, a criminal offense may be established exclusively by circumstantial evidence. *Duchac v. State*, 505 S.W.2d 237, 241 (Tenn. 1973). "The jury decides the weight to be given to circumstantial evidence, and '[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury.'" *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (quoting *Marable v. State*, 313 S.W.2d 451, 457 (Tenn. 1958)). "The standard of review [for sufficiency of the evidence] 'is the same whether the conviction is based upon direct or circumstantial evidence.'" *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)). In determining the sufficiency of the evidence, this Court should not re-weigh or reevaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. *State v. Buggs*, 995 S.W.2d 102, 105 (Tenn. 1999) (citing *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956)). "Questions concerning the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State

and resolves all conflicts in favor of the theory of the State.” *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978), *superseded by statute on other grounds*, Tenn. R. Crim. P. 33, *as recognized in State v. Barone*, 852 S.W.2d 216, 218 (Tenn.1993) (internal quotation marks omitted). The Tennessee Supreme Court explained the rationale for this rule, stating:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolln v. State, 405 S.W.2d 768, 771 (Tenn. 1966) (citing *Carroll v. State*, 370 S.W.2d 523, 527 (Tenn. 1963)).

To be sure, this Court must afford the State of Tennessee the “strongest legitimate view of the evidence” contained in the record, as well as “all reasonable and legitimate inferences” that may be drawn from the evidence. *Goodwin*, 143 S.W.3d at 775 (quoting *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000) (citations omitted).

1. Theft of Property Conviction in Count 2

A person commits theft of property if that person: (1) “knowingly obtains or exercises control over the property,” (2) “with intent to deprive the owner” of the property, and (3) “without the owner’s effective consent.” T.C.A. § 39-14-103 (2011). In addition to these three elements, the fact-finder must also determine the classification of the theft based on the value of the property stolen. Theft of property valued at more than \$1,000.00 but less than \$10,000 is a Class D felony. T.C.A. § 39-14-105 (3) (2011). Theft may also be inferred by the mere possession of recently stolen goods. *State v. Tuttle*, 914 S.W.2d 926, 932 (Tenn. Crim. App. 1995); *State v. Hatchett*, 560 S.W.2d 627, 629 (Tenn. 1987).

The evidence, considered in the light most favorable to the State, shows that, on December 27, 2011, Ms. Quinn discovered that the door of Ms. Picheco’s home was

broken and items had been stolen from inside the home. Ms. Picheco valued the stolen property at more than \$1,000.00 and less than \$10,000.00. This valuation was based solely on the unrecovered television and Tiffany jewelry. The empty Tiffany jewelry bag and Tiffany box found in the SUV-Expedition at Ms. Connor's home were identified by Ms. Picheco as her personal property. The evidence showed that the Defendant and co-defendant arrived at Ms. Connor's home together in the co-defendant's SUV-Expedition. This same Expedition where some of Ms. Picheco's stolen property was recovered. The Expedition with Ms. Picheco's stolen property therein was located at the site of an aggravated burglary (Ms. Connor's) at which the Defendant was apprehended and which the Defendant admitted to committing. The Picheco and Connor homes were accessed the same way—with glass doors kicked in and broken. The Defendant admitted that the shotgun found between him and the co-defendant inside Ms. Connor's home was his.

More importantly, the Defendant acknowledged that the additional firearm in the Expedition was his property, too. This additional fact links the Defendant to the Expedition and obliterates his claim that he had no knowledge of Ms. Picheco's stolen property in the Expedition. This indicated that the Defendant knowingly exercised control over Ms. Picheco's unrecovered property as well as the recovered property. With the link of the Tiffany bag and Tiffany box to the Expedition, a jury could reasonably determine that Ms. Picheco's stolen property valuation of the unrecovered items was sufficient to support the Defendant's conviction for theft of property over \$1,000.00.

In addition, it was reasonable for a jury to infer that the Defendant and co-defendant also targeted Ms. Picheco's home in the same manner that Ms. Connor's home was targeted. Ms. Picheco's and Ms. Connor's homes were only five miles apart. Both crimes occurred during the holiday season in a specific area where the police "had been having issues with residential burglary problems." Further, the proof and circumstances surrounding the break-in at Ms. Connor's home permitted the jury to draw the reasonable inference that the Defendant was also guilty of stealing or knowingly exercising control over the items from Ms. Picheco's home.

Based on this evidence, we conclude that there was sufficient evidence presented upon which a jury could find, beyond a reasonable doubt, that the Defendant knowingly possessed personal property worth more than \$1,000, without the owner's consent, and continued to exercise control over the personal property with the intent to deprive the owner of the same. As we earlier stated, the jury is entitled to weigh the evidence and determine the inferences to be drawn from the evidence. *Rice*, 184 S.W.3d at 662. The jury observed and heard the witnesses testify at trial and weighed the evidence the State presented. The jury made reasonable inferences based on this evidence and convicted the Defendant, beyond a reasonable doubt, of theft of property valued between \$1,000 and

\$10,000. We conclude that there was sufficient evidence to support the jury's verdict. The Defendant is not entitled to relief as to this issue.

2. Firearm Conviction in Count 5

A person commits the offense of possessing a firearm during the commission of or attempt to commit a dangerous felony as follows: . . . (b) "It is an offense to employ a firearm during the: (1) Commission of a dangerous felony; (2) Attempt to commit a dangerous felony; (3) Flight or escape from the commission of a dangerous felony; or (4) Flight or escape from the attempt to commit a dangerous felony." T.C.A. § 39-17-1324 (b). Aggravated burglary is a dangerous felony. T.C.A. § 39-14-403. "Employ means to make use of." TPI-Crim. 36.06(c) (15th edition).

The evidence, considered in the light most favorable to the State, shows that the Defendant pled guilty to the aggravated burglary of Ms. Connor's home. With regards to the firearm offense, the State elected to prosecute the Defendant under Section (b). The Defendant was found hiding with his co-defendant in a "false spot" inside the basement of Ms. Connor's home. In the "false spot," between the Defendant and co-defendant was a 12-gauge shotgun at their feet. Later, the Defendant admitted that the shotgun was his personal property. The jury could reasonably infer that the only possible explanation for the Defendant possessing said shotgun in Ms. Connor's home was to use it to successfully accomplish the aggravated burglary.

The jury observed and heard the witnesses testify at trial and weighed the evidence the State presented. The jury made reasonable inferences based on this evidence and convicted the Defendant, beyond a reasonable doubt, of employing a firearm during the commission of a dangerous felony. Based on this evidence, we conclude that there was sufficient evidence presented upon which a jury could find, beyond a reasonable doubt, that the Defendant intentionally, knowingly, or recklessly committed the act of employing a firearm during the commission of a dangerous felony. We conclude that there was sufficient evidence to support the jury's verdict. The Defendant is not entitled to relief as to this issue.

B. Thirteenth Juror

Defendant next contends that because no rational trier of fact could have concluded that the essential elements for the offenses charged were established, the trial court, as the thirteenth juror, should have vacated the convictions in counts 2 and 5 and granted the motion for new trial. Defendant cites to the insufficiency of evidence argument section of his brief in support of this contention and makes no additional argument as to why the trial court failed in its role as thirteenth juror. Because we have

previously concluded that the evidence was sufficient to support Defendant's convictions in counts 2 and 5, we further conclude that, in this regard, the trial court did not fail in its role as thirteenth juror. The Defendant is not entitled to relief on this issue.

III. Conclusion

In accordance with the foregoing reasoning and authorities, the judgments of the trial court are affirmed.


LARRY J. WALLACE, SP., JUDGE

**IN THE CIRCUIT COURT OF CHEATHAM COUNTY, TENNESSEE
23RD JUDICIAL DISTRICT AT ASHLAND CITY
CRIMINAL DIVISION**

STATE OF TENNESSEE

) **Case No. 2014-CR-17354**

Respondent,

)

FILED

VS.

)

JUN 1 2 2020

KERRY V. COVINGTON

)

**Julie Hibbs
Circuit Court Clerk**

Petitioner.

)

)

ORDER DENYING

PETITION FOR POST-CONVICTION RELIEF

UNDER THE DNA ANALYSIS ACT OF 2001

This cause came to be heard on the Petition for Post-Conviction Relief under the DNA Analysis Act of 2001 (T.C.A. §40-30-301 et. seq.) filed in this cause on October 23, 2019, by the Petitioner, Kerry V. Covington. The State of Tennessee filed its response to said Petition on June 3, 2020. The Post-Conviction DNA Analysis Act of 2001 (the Act) essentially provides that a person convicted of and sentenced for the commission of first degree murder, second degree murder, aggravated rape, rape, aggravated sexual battery or rape of a child, the attempted commission of any of these offenses, any lesser included offense of these offenses, or, at the direction of the trial judge, any other offense, may at any time, file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence. Tenn. Code Ann. § 40-30-303. A post-conviction court is obligated to order DNA analysis when the Petitioner has met each of the following four requirements:

- (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
- (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
- (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
- (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice. Per Tenn. Code Ann. § 40-30-304.

Additionally, if DNA analysis would have produced a more favorable verdict or sentence if the results had been available at the proceedings leading up to the conviction or sentence, then the post-conviction court may order DNA analysis when the Petitioner meets the requirements of Tennessee Code Annotated section § 40-30-305. See Griffin v. State, 182 S.W.3d 795, 798 (Tenn. 2006). However, the Act does not require the post-conviction court to hold a hearing on the matter. Dennis R. Gilliland v. State, No. M2007-00455-CCA-R3-PC, 2008 WL 624931, at *3 (Tenn. Crim. App. at Nashville, Mar. 3, 2008). Notably, if the State contests any of the qualifying requirements of the Act and it is apparent the Petitioner cannot establish each requirement, the post-conviction court may summarily dismiss the petition. Charles E. Jones v. State, No. W2014-02306-CCA-R3-PC, 2015 WL 3882813, at *3 (Tenn. Crim. App. at Jackson, June 24, 2015). In other words, the Petitioner's failure to establish any single requirement may result in a dismissal of the petition. *Id.* "The post-conviction court is

afforded considerable discretion in determining whether to grant a petitioner relief under the Act, and the scope of appellate review is limited.” Sedley Alley v. State, No. W2004-01204-CCA-R3-PD, 2004 WL 1196095, at *3 (Tenn. Crim. App. at Jackson, May 26, 2004). On appeal, a reviewing court will not reverse the post-conviction court’s judgment unless it is not supported by substantial evidence. *Id.*

PROCEDURAL HISTORY

On October 7, 2014, the Cheatham County Grand Jury returned a superseding indictment [Case No. 2014-CR-17354] charging the Petitioner/Defendant, Kerry V. Covington, with Aggravated Burglary, Two Counts of Theft of Property, Aggravated Robbery With a Weapon, Two Counts of Aggravated Kidnapping and Two Counts of Aggravated Rape allegedly committed on December 8, 2013. The case proceeded to a plea agreement on said March 30, 2015, in Cheatham County Circuit Court. The Petitioner entered a no contest plea agreement as a Range I Offender to Count 1-Aggravated Burglary (Class C Felony), Count 2-Theft of Property (Class D Felony), Count 3-Aggravated Robbery With a Weapon (Class B Felony), Count 6-Aggravated Rape (Class A Felony), and Count 8-Theft of Property (Class D Felony). The agreed effective sentence imposed was forty years to be served in the TDOC. Petitioner filed a Motion for Post-Conviction Relief on May 12, 2015. On October 13, 2015, Petitioner’s post-conviction counsel filed a certification of counsel statement indicating that there would be no amended post-conviction petition filed and that Petitioner would rely on the grounds alleged in his original post-conviction petition filed on May 12, 2015. An evidentiary hearing was conducted on November 18, 2015. The Court after having reviewed the file and the relevant transcripts and exhibits denied said post-conviction relief on May 19, 2016. The Tennessee Court of Criminal Appeals affirmed said decision by

dismissing Petitioner's appeal on July 17, 2018. Kerry v. Covington v. State, No. M2017-02175-CCA-R3-PC (Tenn. Crim. App. at Nashville, July 17, 2018). Subsequently, Petitioner filed the instant action regarding post-conviction relief under §40-30-304, et. seq. on October 23, 2019.

FINDINGS AND CONCLUSIONS OF LAW

This Court holds that the Petitioner has failed to satisfy that requirements of T.C.A §40-30-304, (1), (2) and (4). Specifically, the Petitioner failed to prove T.C.A. §40-30-304 (1), i.e., That a reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA; (2) That the evidence is still in existence and is in such a condition that DNA analysis may be conducted and (4) That the application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Initially, the Petitioner failed to satisfy the requirement listed in Tennessee Code Annotated section §40-30-304(1). Clearly, the evidence against the Petitioner was overwhelming, including the detailed testimony of his co-defendant, Antonio Nelson, elicited on October 20, 2014, Case No. 2014-CR-17143, which was corroborated by other evidence and witnesses. This evidence indicated that Petitioner/Defendant, Covington, was heavily involved in the criminal acts committed against the victim. There was sufficient evidence presented against the Petitioner/Defendant, Covington, for Aggravated Burglary, Two Thefts of Property, Aggravated Robbery With a Weapon, and Aggravated Rape. (October 20, 2014, Sentencing Hearing-Antonio Nelson, Transcript Attached).

Additionally, the Petitioner failed to satisfy the requirement listed in Tennessee Code Annotated section §40-30-304(2). The appellate court addressed the requirement in T.C.A. §40-30-304 (2), in Devon M. Crawford v. State, No. W2010-01676-CCA-R3-PC, 2011 WL 2448925 (Tenn. Crim. App. at Jackson, June 20, 2011). In Devon M. Crawford, the defendant was convicted of the attempted aggravated robbery of a victim in a mall parking garage, during which he shot and killed the victim. *Id.* The defendant and his co-defendant gave statements providing specific details and admitting the crimes. *Id.* The defendant pled guilty to felony murder and received a life sentence. *Id.* Thereafter, he filed a petition seeking testing of evidence pursuant to the Act, but he failed to specifically identify the evidence he wanted tested. *Id.* at *3. The post-conviction court denied his petition. *Id.* On appeal, the appellate court stated: Although the State is in a better position to confirm or deny the existence of physical evidence under its control, because the Petitioner did not name items he wished to have submitted for the testing, the State could not respond as to whether these items were in existence. We conclude that substantial evidence supports the post-conviction court's finding that the Petitioner failed to demonstrate criterion (2), that the evidence was still in existence and in such a condition that DNA analysis could be conducted. *Id.* at *4. As in Devon M. Crawford, the Petitioner's failure to specify the evidence to be tested compels this Court to conclude he has failed to satisfy Tennessee Code Annotated section § 40-30-304(2).

Lastly, the Petitioner failed to satisfy the requirement listed in Tennessee Code Annotated section §40-30-304(4). The Petitioner in the case at bar, summarily asserted in his petition that "proper investigation of this case shall show the court that this petitioner is actually

innocent.” In Devon M. Crawford, this court cautioned that requirement (4), namely that the application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice, “requires more than a bare assertion that a petitioner is seeking to demonstrate his innocence.” Id. As earlier discussed, the Petitioner does not specify which evidence he seeks to have tested and how testing this evidence would, in fact, demonstrate his innocence. He merely states that testing would demonstrate his innocence. A bare assertion that testing would demonstrate innocence without more is not sufficient to satisfy criterion (4) of this statute. Thus, this Court concludes that the Petitioner failed to satisfy T.C.A. §40-30-304 (4).


Therefore, this Post-Conviction Court concludes that the Petitioner failed to satisfy the requirements for DNA testing under T.C.A §40-30-304, (1), (2) and (4).

CONCLUSION

Petitioner-Covington has requested relief pursuant to Tennessee Code Annotated §40-30-301, et. seq. Specifically, T.C.A. §40-30-304, provides that the petitioner shall have the burden of satisfying each of the four requirements under said statute. The Petitioner failed to meet three of the requirements under said statute. Further, this Court has considered all of the allegations raised by the Petitioner. None have merit, as Petitioner has failed to carry his burden of proof. In summary, the Petitioner has failed to prove any claim which would warrant post-conviction relief under the Constitutions of the United States or Tennessee or any other statutes.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Petition for Post-Conviction Relief under the DNA Analysis Act of 2001 is hereby denied without a hearing.

Entered this 12th day of June, 2020.



Larry J. Wallace, Judge

Circuit Court, Div. II-23rd Judicial District

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been mailed via U.S. Postal Service to all parties in this action at their last known address, on this 12 day of June, 2020.

Kerry V. Covington #496687
Petitioner
West Tennessee State Penitentiary
P.O. Box 1150
Henning, Tennessee 38041

Margaret Sagi
District Attorney General
P.O. Box 690
Ashland City, Tennessee 37015
Phone: 615-792-7500

Julie Hibbs by Marlene Patton cax
Julie Hibbs, Circuit Court Clerk
Cheatham County

IN THE CIRCUIT COURT FOR STEWART COUNTY, TENNESSEE

AT DOVER

STATE OF TENNESSEE
COUNTY OF STEWART
Filed in Circuit Court
Jason L. Wallace, Clerk

STATE OF TENNESSEE

on 2 day of
May 2014 at 4:29 P.M.

vs.

DOCKET NO. 2014-CR-18

DANNY O. RAY

CRIMINAL DIVISION

MEMORANDUM OPINION

Procedural History

On January 21, 2014, Defendant, Danny O. Ray, was indicted by the Stewart County Grand Jury, in case number 2014-CR-18, of: Count 1: Driving Under the Influence (1st Offense). On February 26, 2014, the Defendant filed a Motion to Dismiss Indictment which was later construed by agreement to be in the form of a Motion to Suppress arguing that the State did not have reasonable suspicion to stop the Defendant. On March 26, 2014, the Court heard the Motion to Suppress. The Court's ruling is fully set forth in this Memorandum and Opinion.

Findings of Fact

Trooper Shawn Seay (hereinafter referred to as "Trooper Seay") is a Tennessee Highway State Trooper that has been employed with the State of Tennessee for approximately 6 years. On January 26, 2013, at approximately 2:59 a.m., Trooper Seay was on patrol and observed Defendant's vehicle driving east ("northbound side") on Highway 79 in Dover, Tennessee, swerve off to the right of the white fog line and drive on the fog line. At which point, Trooper Seay activated his patrol car camera. Subsequently, Defendant's vehicle was observed by Trooper Seay to be straddling the dotted white lines in between the eastbound fast and slow lanes

of travel, i.e., driving in both lanes of travel. Trooper Seay followed Defendant's vehicle for approximately a half mile and then initiated a traffic stop based on his observations. Defendant was ultimately arrested for Driving Under the Influence.

Conclusions of Law

The Defendant has argued that there was insufficient reasonable suspicion for the State to initiate a traffic stop upon him. In support thereof, the Defendant relied on the Fourth Amendment of the U.S. Constitution and Article I, Section 7 of the Tennessee Constitution in arguing that said provisions were violated with a warrantless seizure of the Defendant. The Defendant cited several Tennessee cases, including State v. Binette, 33 S.W.3d 215 (Tenn. 2000); State v. Page, 2008 Tenn. Crim. App. LEXIS 139; State v. Puckett, 2003 Tenn. Crim. App. LEXIS 593, as bearing upon the case at bar. In response, the State cited the case of State v. Minchew, 2012 Tenn. Crim. App. LEXIS 279.

Clearly, under both constitutions, a warrantless seizure is presumed to be unreasonable and the resulting evidence is subject to suppression unless the state can demonstrate that the seizure was performed pursuant to one of the narrowly defined exceptions to the warrant requirement. Binette, 33 S.W.3d at 218. Such an exception exists when a police officer makes an investigatory stop based upon 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, 88 S.Ct. 1868, 20 L. Ed. 2d 889 (1968).

Moreover, the Tennessee Supreme Court has ruled that once a police officer turns on the blue lights of a vehicle, a police officer has initiated a traffic stop and has thus seized the subject of the stop under the U.S. and Tennessee Constitutions. State v. Pulley, 863 S.W.2d 29, 30

(Tenn. 1993). Therefore, when Trooper Seay stopped the Defendant's vehicle by turning on his blue lights, he had to have reasonable suspicion, supported by specific and articulable facts, that the Defendant had committed or was about to commit a criminal offense in order for the stop to be constitutionally valid. Furthermore, the U.S. Supreme Court has ruled that in making determinations as to whether a police officer's reasonable suspicion is supported by specific and articulable facts, a court must consider the totality of the circumstances. United States v. Cortez, 496 U.S. 325, 330, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990).

In reviewing the facts of the instant case to the relevant case law, this Court is persuaded by Minchew, 2012 Tenn. Crim. App. LEXIS 279. The facts in the case at bar are closely aligned to the facts in Minchew. In the instant case, Trooper Seay observed the Defendant swerve off to the right of the white fog line and drive on said fog line. Additionally, Trooper Seay watched as Defendant straddled the dotted white lines between the fast and slow lanes of travel. In effect, Defendant was driving in both lanes of travel. Trooper Seay followed the Defendant for a half-mile before initiating the traffic stop. In Minchew, the officer observed defendant's vehicle swerve into another lane, straddle the dotted lines between the lanes, swerve within its own lane and touch the lines many times.

The case at bar is distinguishable from the cases of Puckett, 2003 Tenn. Crim. App. LEXIS 593; Binette, 33 S.W.3d 215, 218 (Tenn. 2000); and Page, 2008 Tenn. Crim. App. LEXIS 139. In Puckett, the Court of Criminal Appeals ruled there was insufficient reasonable suspicion because the defendant did not drive erratically and stayed within the same lane of travel. In Binette, the Court of Criminal Appeals ruled there was insufficient reasonable suspicion because the defendant stayed within the same lane of travel. In contrast, the Defendant in the case at bar straddled the dotted white lines driving in both lanes of travel (evidence was

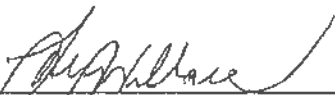
also presented that the Defendant swerved off to the right of the white fog line and drove on the fog line prior to the traffic stop). In Page, the Court of Criminal Appeals ruled there was sufficient reasonable suspicion because the defendant drove unusually slow, weaved within his lane of travel and crossed into an opposing lane of traffic. The Defendant in the instant case argued that he never crossed into any opposing lane of traffic and therefore his Motion to Suppress should be granted. However, the Defendant's argument misses the point because his actions of straddling the white dotted lines and driving in both lanes of travel created sufficient danger warranting a traffic stop.

In summary, the Court finds that this is a close issue. However, based on the totality of the circumstances, the Court finds there was sufficient reasonable suspicion to initiate a traffic stop of the Defendant's vehicle.

Conclusion

Accordingly, the Court holds that the Defendant's Motion to Suppress is hereby denied. The case shall be set on the next docket to obtain a trial date

ENTERED this the 2nd day of May, 2014


LARRY J. WALLACE
CIRCUIT COURT JUDGE

Certificate of Service

I hereby certify that a true and exact copy of the foregoing was forwarded via facsimile to Talmadge Woodall, Assistant District Attorney General, 615-789-5012, and to Will Riggins, Attorney for Defendant, at 931-919-1314, on this 2nd day of May, 2014.

Jason Wallace
Clerk - Deputy Clerk
By: Wang K. Templeton R

IN THE CIRCUIT COURT FOR DICKSON COUNTY, TENNESSEE

AT CHARLOTTE

FILED May 29 2014

4:21 P. M.

Pamela A. Myatt
Circuit Court Clerk

STATE OF TENNESSEE

vs.

DOCKET NO. 2013-CR-234

EDWARD JOSEPH BENESCH, II

CRIMINAL DIVISION

MEMORANDUM OPINION

PROCEDURAL HISTORY

On April 24, 2013, Defendant, Edward Joseph Benesch, II, was indicted by the Dickson County Grand Jury, in case number 2013-CR-234, of: Count 1: Felony Murder; Count 2: Felony Murder; Count 3: Aggravated Child Abuse (Under 6); and Count 4: Aggravated Child Neglect (Serious Bodily Injury).

On July 2, 2013, the Defendant filed a Motion to Suppress arguing that the State obtained statements from the Defendant in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section Nine of the Tennessee Constitution. On July 12, 2013, a hearing was held and an Order was entered wherein the State and Defendant agreed that any statements made by the Defendant after he asserted his right to counsel were taken in violation of his constitutional rights. On May 19, 2014, a hearing was held to clarify the previous Agreed Order entered on July 12, 2013. After further review of the evidence, the State contended that the Defendant's statements made immediately after he requested an attorney and initiated by said Defendant should be admissible until the detective interjected the Defendant's dialogue with a question. The Defendant contended that said statements should be inadmissible because Defendant requested an attorney. The Court's ruling is fully set forth in this Memorandum Opinion.

FINDINGS OF FACT

Detective Kelly Owen (hereinafter referred to as "Det. Owen") is a Dickson City Police Detective that has been employed with the city of Dickson, Tennessee. On March 7, 2013, Det. Owen was on duty when he was dispatched to investigate a young child not breathing. According to Det. Owen, the Defendant had dropped the child off with a relative of the child and left. The Defendant was located and placed into custody and brought to the police station for questioning. Det. Owen and TBI Agent Mike Breedlove interviewed said Defendant. Said interview was taped by a video recording that was admitted into evidence as Exhibit 3 for purposes of this suppression hearing (also a transcript of said recording was admitted into evidence as Exhibit 1 for purposes of this suppression hearing).

In addition, the Defendant was given his Miranda rights and executed a waiver (Exhibit 2 for purposes of this suppression hearing) on March 7, 2013, at 11:02 a.m. For the relevancy of the suppression hearing, Agent Breedlove exited the interview room at 11:29 a.m., according to the transcript time (Ex. 1). At that point, Det. Owen and Defendant engaged in conversation until 11:38 a.m. At 11:38 a.m., transcript time, Defendant stated, "Talk to a lawyer man." Det. Owen replied, "Do what?" Defendant then stated, "I said I need to talk to a lawyer...little girl is dead man, it's my fault...all my fault man...motherxxxxxxx fault...I wish I had been good, man, I was trying to keep them safe. Being charged with murdering a kid...it's like my baby man, it's like mine, was so close...she's pregnant with my baby...I killed her kid, I killed her kid man, she's pregnant with my baby (Defendant crying). I can't believe she's dead man, that's crazy, that can't be true, man...when Brody called me and told me she was dead." Det. Owen then asked a second question.

CONCLUSIONS OF LAW

The Defendant has argued that the statements should be inadmissible because they were obtained from the Defendant in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section Nine of the Tennessee Constitution. In support thereof, the Defendant cited State v. Huddleston, 924 S.W.2d 666 (Tenn. 1996) and Miranda v. Arizona, 384 U.S. 436 (1966). In response, the State cited the case of Davis v. U.S., 512 U.S. 452 (1994), as to why the statements should be allowed into evidence.

Clearly, under Miranda, once an individual requests an attorney, the interrogation must cease until an attorney is present. But, the Miranda decision was later clarified with the decision in Edwards v. Arizona, 451 U.S. 477 (1981). In Edwards, the U.S. Supreme Court held that once a defendant expresses a desire to deal with the police only through an attorney, he's not subject to any further interrogation by the authorities until counsel has been provided unless the Defendant initiates further communication with the police. In State v. Claybrook, 736 S.W.2d 95 (1987), the Tennessee Supreme Court held that where the defendant initiated the discussion and "bubbled forth" statements, such statements were admissible irrespective of whether the defendant had requested an attorney.

Similarly, in State v. Thompson, 768 S.W.2d 239 (1999), the Tennessee Supreme Court held statements were admissible where defendant had initiated subsequent conversations with police even though defendant had requested an attorney. Moreover, in State v. Bates, 804 S.W.2d 868 (Tenn. 1991), the Supreme Court of Tennessee held that the subsequent confession of a defendant was admissible where the defendant initiated the conversation. To be sure, the case of State v. Saylor, 117 S.W.3d 239 (Tenn. 2003), is persuasive on the case at bar. In Saylor, the Tennessee Supreme Court held that the proper standard for a request for counsel is the same under the U.S. and Tennessee Constitutions. Specifically, the defendant must articulate his desire to have an attorney

present very clearly where a reasonable police officer would understand the request to be one for an attorney. Otherwise, according to Saylor, the police may continue questioning so long as the statements of the defendant are equivocal requests for an attorney.

In the case at bar, the Defendant initially made a weak attempt to request an attorney, when he stated, "Talk to a lawyer man." For clarification, Det. Owen stated, "Do what?" The Defendant then made a clear attorney request by stating, "I said I need to talk to a lawyer..." and then the Defendant began the unsolicited narrative. The case of Kuhlmann v. Wilson, 477 U.S. 436 (1986), is close on point to the case at bar as it relates to the specific issue of incriminating statements. In Kuhlmann, the U.S. Supreme Court held that the defendant must demonstrate that the police or their informant took some action beyond merely listening that was designed to deliberately elicit incriminating remarks. Such has not been demonstrated in the case herein. Indeed, the Defendant went on an unsolicited narrative after he clearly requested an attorney.

In addition, the Court must look at the totality of the circumstances that surround the giving of the statement to determine its voluntariness. (Haynes v. State of Wash., 373 U.S. 503 (1963)). The factors a court looks to in determining the voluntariness of the statements of the accused are: age, education, intelligence, prior experience with the police, the repeated and prolonged nature of the questioning, actual or threatened physical abuse upon the accused, the length of the detention before a statement was given, lack of any advice given to the accused regarding constitutional rights, unnecessary delay in bringing the accused before a magistrate, whether the accused was injured, intoxicated, drugged or in ill health when the statement was given and whether the accused was deprived of food, sleep, or medical attention. (State v. Climer, 400 S.W.3d 537 (Tenn. 2013)). Applying these factors to the instant case and weighing the totality of the circumstances, the Court finds the Defendant's statements were voluntary. Specifically, the Defendant has a significant criminal record and is familiar with the criminal justice system. He was 26 years old at the time of

the interview. The detention of the Defendant during which a statement was given lasted no more than three hours. There was no evidence of any actual or threatened abuse upon the Defendant. The Defendant was advised of his constitutional rights and signed a waiver (Exhibit 2). According to Det. Owen's testimony and the Court observing Exhibit 3, the Defendant was not intoxicated. The Defendant did appear to be emotionally distraught, but declined the offering of medical assistance several times. The Court finds that all of the applicable aforementioned factors weigh in favor of voluntariness.


Lastly, the Defendant cited State v. Huddleston, 924 S.W.2d 666 (Tenn. 1996) in his Motion. The case at bar is distinguishable from Huddleston. In Huddleston, the Tennessee Supreme Court ruled that once an attorney request is made that the police must cease questioning until counsel is present. As previously mentioned, the Defendant in the case herein, made an equivocal attorney request which was made clear by Det. Owen's clarifying question. At which point, the Defendant initiated his own narrative and "bubbled forth" the statements. Therefore, Huddleston is inapplicable.

CONCLUSION

Based on the foregoing, the Court holds that the Motion to Suppress is denied as to this limited issue in Exhibit 1, Page 7, Paragraph No. 6 (11:38 a.m.). The entire paragraph at issue is hereby ruled admissible except for the statements that came after Det. Owen asked the second question "Who called you?" That question and the remaining statements of Defendant are hereby excluded.

ALL OF THE FOREGOING IS AN ORDER OF THIS COURT

ENTERED this the 29 day of May, 2014


LARRY J. WALLACE
CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document was sent via fax or email to Olin Baker, Attorney for the Defendant, and Carey Thompson, Assistant District Attorney General, on this 2nd day of May, 2014.

Sam Mitchell
CLERK - DEPUTY CLERK

CHAPTER NO. 785**HOUSE BILL NO. 3142****By Representative Hargrove****Substituted for: Senate Bill No. 3225****By Senator Kyle**

AN ACT to amend Tennessee Code Annotated, Title 9, Chapter 8, Part 3, and Sections 9-8-111, 9-8-402(a), 9-8-402(b), 9-8-403, 12-3-214(d), 12-4-109(a)(1)(B)(viii), 29-13-106(e), 29-13-108, and 29-13-109, relative to the Tennessee Claims Commission; and to amend Tennessee Code Annotated, Title 40, Chapter 38, Part 1, relative to communicating monetary resources to victims of crime.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 9-8-111, is amended by adding the following as a new subsection (d) and by redesignating the existing subsections accordingly:

(d) In cases where the loss, damage or destruction is to a motor vehicle and the employee does not have the benefit of insurance coverage for the motor vehicle, the employee shall not be compensated by the state in an amount in excess of five hundred dollars (\$500).

SECTION 2. Tennessee Code Annotated, Section 9-8-307(a)(1), is amended by deleting the following in its entirety:

The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state falling within one (1) or more of the following categories:

and by substituting instead the following:

The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of state employees, as such term is defined in 8-42-101(3), falling within one (1) or more of the following categories:

SECTION 3. Tennessee Code Annotated, Section 9-8-307(a)(1)(A), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(A) The negligent operation or maintenance of any motor vehicle or any other land, air, or sea conveyance. In addition, the state may be held liable pursuant to this subdivision for the negligent operation of state owned motor vehicles or other conveyances by persons who are not state employees provided such persons operated the vehicle or other conveyance with the permission of a state employee;

SECTION 4. Tennessee Code Annotated, Section 9-8-307(a)(1), is amended by adding the following new subdivision at the end thereof:

(V) Unconstitutional taking of private property, as defined in 12-1-202, including intentional state governmental action resulting in a taking other than the taking of real property and real property rights for the state's system of highways or the state's system of interstate highways;

SECTION 5. Tennessee Code Annotated, Section 9-8-307(a)(2)(A), is amended by deleting the same in its entirety and by substituting instead the following:

(A) The issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization, except as provided for in subdivision (a)(1)(V);

SECTION 6. Tennessee Code Annotated, Section 9-8-307(a)(1)(D), is amended by deleting the same in its entirety and by substituting instead the following:

(D) Legal or medical malpractice by a state employee, provided the state employee has a professional/client relationship with the claimant;

SECTION 7. Tennessee Code Annotated, Section 9-8-307(a)(1)(N), is amended by deleting the same in its entirety and by substituting instead the following:

(N) Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. The claimant must prove under this subdivision that the legislature expressly conferred a private right of action in favor of the claimant against the state for the state's violation of the particular statute's provisions;

SECTION 8. Tennessee Code Annotated, Section 12-3-214(d), is amended by deleting the words "or constitutional rights" and by substituting instead the words and figures "rights pursuant to \square 9-8-307(a)(1)(N)".

SECTION 9. Tennessee Code Annotated, Section 12-4-109(a)(1)(B)(viii), is amended by deleting the words and figures "or constitutional rights" and by substituting instead the words and figures "rights under \square 9-8-307(a)(1)(N)".

SECTION 10. Tennessee Code Annotated, Section 9-8-403, is amended by adding the following as a new, appropriately designated subsection:

() If a claimant appeals the decision of a commissioner pursuant to \square 9-8-403(a)(1), the claimant shall, in addition to complying with all other requirements for perfecting an appeal, notify the clerk of the commission by filing the notice of appeal with the clerk. The notice shall be accompanied by a corporate surety bond payable to the State of Tennessee in an amount determined by the clerk to be sufficient to defray the cost of preparing the transcript. The bond shall be conditioned to pay the charge for services of the Court Reporter in preparing the transcript of the evidence introduced at the hearing before the commission. In the event the claimant does not obtain the relief prayed in the claimant's appeal, the cost of preparing the transcript shall be taxed against the claimant and shall be paid by the claimant or the surety on the bond filed with the commission.

SECTION 11. Tennessee Code Annotated, Section 9-8-403(a)(1), is amended by deleting the fourth sentence thereof in its entirety.

SECTION 12. Tennessee Code Annotated, Section 9-8-403(a)(2), is amended by deleting the same in its entirety and by substituting instead the following:

(2) A small claims docket consisting of claims satisfying the monetary limit applicable to the General Sessions Court of Davidson County. No Court Reporter shall be utilized nor any record made of these proceedings. These proceedings shall be conducted pursuant to rules and regulations promulgated by

the commission. If a claimant consents to having the claimant's claim proceed upon affidavits filed with the commission without a hearing, the state shall be deemed to have waived a hearing on the claim unless the state requests a hearing within sixty (60) days after the claim is filed with, or transferred to, the commission. No appeal may be taken from a commissioner's decision regarding claims appearing on the small claims docket.

SECTION 13. Tennessee Code Annotated, Section 9-8-403(i), is amended by deleting the same in its entirety and by substituting instead the following:

(i) Commissioners shall provide findings of facts and conclusions of law on the disposition of all claims on the regular docket. Except as provided in 29-13-109, an order disposing of a claim on the small claims docket need not include findings of fact and conclusions of law unless requested by a party. The commission is encouraged to make oral decisions immediately after a hearing on any claim if the commission finds that further deliberation is unnecessary. If a claim is disposed of by an oral ruling, counsel for the prevailing party shall prepare and submit an appropriate order reflecting such ruling. Such order shall include proposed findings of fact and conclusions of law if the claim was heard on the regular docket or if a party requested such findings and conclusions in a hearing on the small docket. Any orders prepared by counsel for the prevailing party shall be submitted to the adverse party for approval.

SECTION 14. Tennessee Code Annotated, Section 9-8-403, is amended by adding the following as a new, appropriately designated subsection:

() In the discretion of the claims commission and by agreement of the parties, all or part of a hearing may be conducted by electronic means.

SECTION 15. Tennessee Code Annotated, Section 9-8-308(a), is amended by deleting all sentences after the first sentence thereof and by substituting instead the following:

The tax shall be collected by the administrative clerk of the claims commission, and all funds collected by the clerk shall be paid over to the appropriate fund, as shall be determined by the State Treasurer. Claims automatically transferred to the claims commission by the Division of Claims Administration pursuant to 9-8-402(c) due to a failure to honor or deny the claim during the ninety-day settlement period shall not be subject to the privilege tax established by this section. Notwithstanding any limit on the amount which may be awarded to a claimant, the commissioner or the reviewing court shall have the discretion to order that the privilege tax paid pursuant to this section be refunded to a claimant whose claim is determined to be meritorious.

SECTION 16. Tennessee Code Annotated, Section 9-8-402(a), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

The claimant must give written notice of the claimant's claim to the Division of Claims Administration as a condition precedent to recovery except claims for recovery of taxes shall be filed directly with the administrative clerk of the claims commission.

SECTION 17. Tennessee Code Annotated, Section 9-8-402(b), is amended by deleting the same in its entirety and by substituting instead the following:

(b) The claim is barred unless the notice is given within the time provided by statutes of limitations applicable by the courts for similar occurrences from which the claim arises. The filing of the notice

by the claimant tolls all statutes of limitation as to other persons potentially liable to the claimant due to the occurrence from which the claim before the commission arises. The applicable statute of limitations for the recovery of taxes shall continue to be six (6) months after the payment of the taxes under protest. For workers' compensation purposes, when voluntary payments of compensation or medical expenses have been paid by the division of claims administration or the administrator of the state's workers' compensation program, a claim to recover any unpaid or further workers' compensation benefits must be instituted in the claims commission within the one-year period prescribed in 50-6-203, except in those cases provided for by 50-6-230 or by 7-51-201. Absent prior written consent of the commission, it is mandatory that any claim filed with the claims commission upon which no action is taken by the claimant to advance the case to disposition within any one (1) year period of time be dismissed with prejudice.

SECTION 18. Tennessee Code Annotated, Section 9-8-307(a)(1)(I), is amended by deleting the semicolon ";" which appears immediately after the word "structures" and by substituting instead a comma ",".

SECTION 19. Tennessee Code Annotated, Section 29-13-106(e), is amended by deleting the first and second sentences thereof and by substituting instead the following:

No compensation shall be awarded on account of the same criminal act in an amount in excess of eight thousand dollars (\$8,000), except as provided in subsection (h). All awards granted under subsection (a) shall be aggregated in determining this amount.

SECTION 20. Tennessee Code Annotated, Section 29-13-108(c), is amended by deleting the third and fourth sentences thereof and by substituting instead the following:

If a prosecution is pending or imminent for an offense arising out of the crime upon which the claim is based, the division or commission, whichever is applicable, shall suspend all action on the claim upon application of either the District Attorney General or the alleged offender. In such event, the District Attorney General shall notify the division or commission, whichever is applicable, within ten (10) days after completion of any such prosecution. Proceedings may further be suspended in the interest of justice if a civil action arising from such offense is pending or imminent. The division or commission, whichever is applicable, shall notify the claimant of any suspension under this subsection. A District Attorney General who fails to supply the division with the report required in subsection (d) of this section within one hundred eighty (180) days of the division's receipt of the claim shall be deemed to have waived the right to apply for a suspension under this section, unless good cause is shown for such failure.

SECTION 21. Tennessee Code Annotated, Section 29-13-108(d), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

Unless the claim is suspended under subsection (c), the division shall investigate every claim for compensation and shall make every effort to honor or deny each claim within ninety (90) days of receipt of the claim.

SECTION 22. Tennessee Code Annotated, Section 29-13-108(d), is further amended by deleting the next to the last sentence thereof, which reads as follows:

The division is authorized to transfer any claim filed under this chapter to the commission prior to the expiration of the ninety (90) day settlement period.

and by substituting instead the following:

Unless the claim is suspended under subsection (c), the division is authorized to transfer any claim filed under this chapter to the commission prior to the expiration of the ninety (90) day settlement period.

SECTION 23. Tennessee Code Annotated, Section 29-13-108(e)(1), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

Upon filing or transferring a claim for compensation to the commission, the claim shall be considered, determined and subject to appeal in the manner set forth in 9-8-403 for other decisions of the commission. If a claimant consents to having the claimant's claim proceed upon affidavits filed with the commission without a hearing, the state shall be deemed to have waived a hearing on the claim unless the District Attorney General requests a hearing within sixty (60) days after the claim is filed with, or transferred to, the claims commission.

SECTION 24. Tennessee Code Annotated, Section 29-13-108(e)(1), is further amended by adding the following new sentence at the end thereof:

Notwithstanding any other law to the contrary, if the District Attorney General attends the proceeding, the District Attorney General may present into evidence any police or offense reports and any other reports generated through the District Attorney General's investigation of the claim.

SECTION 25. Tennessee Code Annotated, Section 29-13-108, is amended by adding the following new subsections (g) and (h), and by redesignating the existing subsections accordingly:

(g) Notwithstanding any other law to the contrary, if the division denies a claim on the basis that the claimant does not meet the eligibility requirements for compensation under this part and the claimant appeals the denial to the commission, or if the division transfers the claim to the commission as a result of its inability to honor or deny the claim within the ninety (90) day settlement period, the commission shall consider the claim for the sole purpose of determining whether the claimant meets such eligibility requirements. Such an eligibility requirement may include a determination as to whether the claimant has shown good cause for failing to file the claim within the one (1) year period as prescribed in subsection (a) of this section. Such an eligibility requirement may include a determination as to whether the claimant has shown good cause for failing to file the claim. If the commission determines the claimant meets the eligibility requirements to receive compensation under this part, the commission shall enter an appropriate order reflecting such determination and remand the claim to the division of claims administration for the purpose of determining the amount of compensation to which the claimant is entitled and the manner in which such compensation shall be paid pursuant to 29-13-111. Such order shall include the findings of fact enumerated in subdivisions (b)(2)(A)-(H) of 29-13-109 and in subdivisions (b)(2)(L)-(O) of 29-13-109.

(h) Notwithstanding 9-8-406 or any provision of this part to the contrary, the Department of Treasury may, at its sole discretion, submit a report to the commission which explains the department's action on the claim. Any such report shall be filed within the time allowed for the filing of a responsive brief by a party. The department shall serve copies of the report upon the claimant and the District Attorney General. Any such report shall be considered by the commission without oral argument by the department.

SECTION 26. Tennessee Code Annotated, Section 29-13-108, is further amended by deleting the first sentence of the present subsection (g) and by substituting instead the following:

The commission shall attach to its decision all documentation presented in support of a claim for which compensation is awarded, as well as an executed subrogation agreement.

SECTION 27. Tennessee Code Annotated, Section 29-13-109(b)(1), is amended by deleting the same in its entirety and by substituting instead the following:

(b)(1) All decisions granting an award under this chapter shall be in writing and shall set forth the findings of fact and the decision whether compensation is due under this chapter.

SECTION 28. Tennessee Code Annotated, Section 29-13-109(b)(2), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

(2) Except as provided in 29-13-108(g), the findings of fact shall include, but not be limited to, those enumerated in this subdivision.

SECTION 29. Tennessee Code Annotated, Section 29-13-109(f), is amended by deleting the last sentence thereof in its entirety and by substituting instead the following:

Awards may be amended under the provision of 29-13-108(j) in furtherance of this policy.

SECTION 30. Tennessee Code Annotated, Title 40, Chapter 38, Part 1, is amended by adding the following as a new, appropriately designated section:

40-38-1_. The office of the District Attorney General shall notify in writing each victim of a violent crime who may be eligible for compensation under the Criminal Injuries Compensation Act of the methods by which the victim may obtain such compensation. The written notice shall be substantially in the form and content as prescribed by the State Treasurer. In cases involving the death of such a victim, the notification shall be given to the closest relative to the deceased victim. For purposes of this section, "closest relative" shall have the same meaning as that given in 34-11-101 (3).

SECTION 31. Tennessee Code Annotated, Section 9-8-307(i), is amended by deleting that subsection in its entirety and substituting instead the following:

(i)(1) Claims that were timely filed against state employees with a Court of Competent Jurisdiction and that fall within the jurisdiction of the claims commission found in subsection (a)(1)(A) shall be dismissed as to the state employees and transferred to the Division of Claims Administration to proceed as a claim against the state provided that the state employees alleged to have acted negligently were, at the time of the incident giving rise to the claim, operating a private motor vehicle within the scope of the employees' office or employment, and the employees' action or inaction was not willful, malicious, criminal or done for personal gain. When a motion for transfer is made the court shall require that notice be given the Attorney General and the state shall be permitted to intervene and respond to the motion. Upon such transfer, the claim shall be considered timely filed with the Division of Claims Administration and the claims commission. Such transfer shall be effected upon an order of dismissal and transfer from the court. Any such transfer must be made within one (1) year of the filing of the original complaint with the court or the passage of this act, whichever is later. Such claims shall be considered by the Division of Claims Administration and the claims commission, as provided by law. This subsection shall be effective for causes of action arising

on or after July 1, 1995, pending at the time of passage of this act and causes of action arising on or after the effective date of this act.

(2) Claims which are transferred to the Division of Claims Administration pursuant to this subdivision shall be investigated by the Division of Claims Administration, acted upon or transferred by the division, and acted upon by the claims commission pursuant to the same statutory requirements and procedures as apply to claims originally filed with the Division of Claims Administration.

SECTION 32. Tennessee Code Annotated, Section 9-8-307(i), is amended by deleting that subsection in its entirety and by substituting instead the following:

(i)(1) Claims that were timely filed against state employees with a court of competent jurisdiction and that fall within the jurisdiction of the claims commission found in subsection (a)(1)(A) shall be dismissed as to the state employees and transferred to the Division of Claims Administration to proceed as a claim against the state provided that the state employees alleged to have acted negligently were, at the time of the incident giving rise to the claim, operating a private motor vehicle within the scope of the employees' office or employment, and the employees' action or inaction was not willful, malicious, criminal or done for personal gain. When a motion for transfer is made, the court shall require that notice be given to the Attorney General and the state shall be permitted to intervene and respond to the motion. Upon such transfer, the claim shall be considered timely filed with the Division of Claims Administration and the claims commission. Such transfer shall be effected upon an order of dismissal and transfer from the court. Any such transfer must be made within one (1) year of the filing of the original complaint with the court or the passage of this act, whichever is later. Such claims shall be considered by the Division of Claims Administration and the claims commission, as provided by law. This subsection shall be effective for causes of action arising on or after July 1, 1995, pending at the time of passage of this act and causes of action arising on or after the effective date of this act.

(2) Claims which are transferred to the Division of Claims Administration pursuant to this subdivision shall be investigated by the Division of Claims Administration, acted upon or transferred by the division, and acted upon by the claims commission pursuant to the same statutory requirements and procedures as apply to claims originally filed with the Division of Claims Administration.

SECTION 33. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 34. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 9, 1998

APPROVED this 22nd day of April 1998

AMENDMENT NO. _____

Back

Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

AMEND Senate Bill No. 3225

House Bill No. 3142*

by adding the following language as a new, appropriately designated section immediately following the existing Section 30 and renumbering subsequent sections appropriately:

SECTION __. Tennessee Code Annotated, Section 9-8-307(i), is amended by deleting that subsection in its entirety and substituting instead the following:

(i)(1) Claims that were timely filed against state employees with a court of competent jurisdiction and that fall within the jurisdiction of the claims commission found in subsection (a)(1)(A) shall be dismissed as to the state employees and transferred to the division of claims administration to proceed as a claim against the state provided that the state employees alleged to have acted negligently were, at the time of the incident giving rise to the claim, operating a private motor vehicle within the scope of the employees' office or employment, and the employees' action or inaction was not willful, malicious, criminal or done for personal gain. When a motion for transfer is made the court shall require that notice be given the attorney general and the state shall be permitted to intervene and respond to the motion. Upon such transfer, the claim shall be considered timely filed with the division of claims administration and the claims commission. Such transfer shall be effected upon an order of dismissal and transfer from the court. Any such transfer must be made within one (1) year of the filing of the original complaint with the court or the passage of this act, whichever is later. Such claims shall be considered by the division of claims administration and the claims commission, as provided by law. This subsection shall be effective for causes of action arising on or after July 1, 1995, pending at the time of passage of this act and causes of action arising on or after the effective date of this act.



70000000



01246829