

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

Name: Vance Walker Dennis

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(including county)

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(including county)

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INTRODUCTION

The State of Tennessee Executive Order No. 87 (September 17, 2021) 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.

The Council requests that applicants use 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 as detailed in the application instructions. Additionally you must 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 original application, or the digital copy may be submitted via email to rachel.harmon@tncourts.gov.

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I am not currently employed.

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

I was licensed to practice law in 2001, and my TBPR number is 021178.

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

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

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

No.

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

I was an Assistant District Attorney for the 24th Judicial District of Tennessee from November 15, 2014, until September 1, 2022. Prior to that, I was a partner at McGee & Dennis, Attorneys at Law, in Savannah, TN, From July 1, 2001, until November 15, 2014. I also served as a State Representative for the 71st House District in the Tennessee General Assembly from November 2008 until November 2014.

6. If you have not been employed continuously since completion of your legal education,

describe what you did during periods of unemployment in excess of six months.

N/A

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.

From November 15, 2014 until May 1, 2016, I was the DUI prosecutor for our judicial district. I prosecuted DUI and Vehicular Homicide offenses throughout our district.

From May 1, 2016, until September 1, 2022, I was the Chief Prosecutor for Hardin County. I prosecuted almost all misdemeanor and felony offenses in the General Sessions and Circuit Courts of Hardin County. I occasionally prosecuted cases in other counties as well.

I have not actively engaged in the practice of law since my termination on September 1, 2022.

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.

As the Chief Prosecutor for Hardin County, I was responsible for all aspects of prosecution of criminal offenses. Bond proceedings, preliminary hearings, and plea negotiations consumed a large part of my General Sessions practice. I was also responsible for preparing information and indictments, and presenting said indictments in Grand Jury proceedings. My Circuit Court practice encompassed plea negotiations, motions practice, trial preparation and the prosecution of jury and bench trials. I was also responsible for post-trial pleadings and judgment preparation. I was also responsible for representing the State in Juvenile Court proceedings.

While in private practice, I represented individuals, business entities, and government entities

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

During my service in the General Assembly, I drafted and sponsored dozens of legislative proposals. I worked primarily on criminal and civil legislation. I served on the Judiciary and Civil Justice committees and subcommittees, which reviewed hundreds of legislative proposals. I spent countless hours analyzing the impacts of proposed legislation and assisted numerous colleagues in the drafting of legislative proposals and amendments.

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

A few days after assuming the role of Chief Prosecutor for Hardin County, I was called to the scene of a homicide where the victim had been stabbed more than 40 times. It was my first violent homicide prosecution. The experience of working with talented law enforcement officers to investigate and prosecute such a case from the initial crime scene to the ultimate jury verdict of Guilty of First Degree Murder was one of the most memorable and educational experiences I have experienced.

I sponsored, carried, and assisted in the passage of dozens of legislative proposals from 2008 to 2014, but two were particularly noteworthy to me. The first was the Tennessee Civil Justice Act of 2011. I carried this bill in the House at the request of Governor Bill Haslam. I spent countless hours discussing, negotiating, drafting, redrafting, and arguing with many of the finest legal minds in our State as we crafted these important reforms to our civil justice system. The second bill of note amended the judgment interest statute from a static percentage to a fluctuating rate. This proposal provided welcome relief and a more equitable judicial environment for those litigants most in need of assistance.

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.

N/A

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.

I currently serve as a trustee for a local cemetery association, and I served for several years as the trustee of a testamentary trust for the benefit of a disabled adult.

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

I served for one term as a board member for the Lawyers Fund for Client Protection.

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

I applied to fill a vacancy on the Tennessee Court of Criminal Appeals in 2016. On March 8, 2016, The Governor's Council for Judicial Appointments interviewed applicants and my name was not submitted to the Governor by the Council.

I applied to fill a vacancy for Chancellor of the 24th Judicial District in 2019. On June 25, 2019, the Trial Court Vacancy Commission interviewed applicants, and my name was submitted to the Governor by the Commission.

I applied to fill a vacancy for Circuit Judge, Division 1, in the 24th Judicial District in 2021. On August 3, 2021, the trial Court Vacancy Commission interviewed applicants, and my name was submitted to the Governor by the Commission.

EDUCATION

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

The University of Tennessee at Knoxville, August 1994 to May 1998, Bachelor of Science in Agricultural Economics

The University of Tennessee College of Law, August 1998 to December 2000, Doctor of Jurisprudence

PERSONAL INFORMATION

15. State your age and date of birth.

I am 46 years old. My date of birth is [REDACTED] 1975.

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

I am a lifelong Tennessee resident.

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

I have lived in Hardin County my entire life, except for my time in college and law school.

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

I vote in Hardin County.

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

N/A.

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.

Four complaints have been filed against me with the Tennessee Board of Professional Responsibility during my legal career. One was filed by an appointed criminal defendant many years ago who was dissatisfied with the speed at which his appeal was proceeding. Three others have been filed by defendants I have prosecuted in recent years alleging various acts of prosecutorial misconduct and dissatisfaction with our judicial system. I responded to each complaint in a timely manner, and each complaint was dismissed.

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

No.

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

No.

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

IN RE: EDDIE K. WHITLOW TRUST AGREEMENT. JERRY NELL WHITLOW, PETITIONER, VS. VANCE DENNIS, SUBSTITUTE TRUSTEE, HARDIN COUNTY CHANCERY COURT DOCKET NUMBER 7272

I was the trustee of a testamentary trust created for the benefit of a mentally disabled adult for several years while in private practice. While I was serving as trustee, the mother of the disabled

beneficiary filed a petition seeking the appointment of a new trustee. The petition was voluntarily dismissed by the petitioner on October 4, 2011.

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

I have been a member of the Savannah Lions Club for many years, and I have held several offices in the club in that time.

I am an alumni member of the Alpha Gamma Rho fraternity.

My family and I have been members of the Jackson Country Club since 2019.

My children are involved in extracurricular activities at the Hardin County High School, and my wife and I assist with booster organizations and fundraising for those activities.

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.
- If so, list such organizations and describe the basis of the membership limitation.
 - 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.

My college fraternity, Alpha Gamma Rho, was for men only.

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices that you have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

I am a member of the Hardin County Bar Association.

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

2011 - Legislator of the Year - Southwest Tennessee Development District

2011 – Community Service Award – Tennessee Hospital Association

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

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

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

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

N/A

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

I presented a legislative update at a couple of Hardin County Bar Association CLE events.

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

I was a candidate for the Hardin County Commission in 2002. I was a candidate for State Representative in 2006, 2008, 2010, 2012 and 2014. I served in the State House from 2008 to 2014. I applied to fill a vacancy on the Tennessee Court of Criminal Appeals in 2016. I applied to fill the 24th District Chancellor vacancy in 2019. I was also a candidate in the Republican caucus for 24th District Chancellor in 2019. I applied to fill a vacancy for 24th District Circuit Court Judge, Division 1, in 2021. I was a candidate for Circuit Court Judge, Division 2, in 2022.

Applications were for appointed positions. I was a candidate for elected positions.

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

No.

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.

See attached.

ESSAYS/PERSONAL STATEMENTS

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

In my opinion, an Appellate Judge should possess a wide variety of legal and professional career and life experience. I have spent the last 21 years accumulating that wide variety of legal and professional experience, and I believe that I can best use those accumulated skills and experience through service on our Court of Criminal Appeals. I have spent many years as a prosecutor and many years as a criminal defense attorney. I have tried many cases. I have also spent many years creating the legislation that we apply in our trial and appellate courts. I would like to continue to put this knowledge and experience to work for the people of our great State.

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

In private practice, I routinely accepted many pro bono clients and appointed cases. As a prosecutor, I went to great lengths to treat each defendant fairly and equally regardless of financial condition, race, sex, or ethnicity.

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 was created by the legislature in 1967 to hear trial court appeals in felony and misdemeanor cases, as well as post-conviction petitions. The Tennessee General Assembly increased the membership of the court from nine to 12 on Sept. 1, 1996.

The members sit monthly in panels of three in Jackson, Knoxville and Nashville. They may also meet in other places as necessary.

All Court of Criminal Appeals decisions may be appealed to the state Supreme Court by permission, except in capital cases, which are appealed automatically. No witnesses, juries or testimonies are present in the Court of Criminal Appeals. Instead, attorneys present oral and written arguments.

Court of Criminal Appeals judges are elected on a “retain-replace” ballot every eight years.

I believe our appellate courts work best when the members have diverse backgrounds and life experiences. My experiences as prosecutor and defense counsel provide a unique ability to appreciate the inner workings of both sides of our criminal justice system.

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

I would like to continue my activities in the Savannah Lions Club and my assistance with my children’s extracurricular activities to the extent I am able.

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

I believe myself to be a calm and patient person. I am not afraid to make important decisions, but I strive not to be rash. I want to hear from all sides in a dispute and gather as much information as possible prior to making a decision. I view life as a constant search for knowledge; not simply for knowledge’s sake, but for the hope that it will help to impart wisdom.

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)*

Certainly. That is the very nature of the position.

In 2011, our state legislature passed the Exclusionary Rule Reform Act, codified at T.C.A. 40-6-108, which attempted to prohibit suppression of evidence acquired pursuant to a defective search warrant if the error giving rise to the defect was made in good faith. I was a vocal opponent of this legislation, primarily because I believed it encouraged careless behavior on the part of government when intruding on a fundamental constitutional right. Despite my opposition, the legislation was swiftly approved and codified.

Upon my retirement from the legislature in 2014, I was often called upon to defend the act I had so recently opposed as I began my new career as a prosecutor. While I still had reservations about the wisdom of the act from a policy perspective, I nonetheless defended its application wholeheartedly as I opposed the suppression of evidence in my cases. Regardless of my personal reservations, I fought for application of this statute because it was my duty. Fortunately, at least from my personal perspective, recent case law has resolved many of my concerns about the statute in question. Even so, remaining concerns will not alleviate my duty and responsibility in this or any other matter to follow the law as created by our legislature and interpreted by our Courts to the best of my ability.

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. Judge C. Creed McGinley, [REDACTED] Savannah, TN 38372, [REDACTED] |
| B. Frankie Stanfill, Assistant Public Defender, [REDACTED] Camden, TN 38320, [REDACTED] |
| C. Barrett Rich, Board Member, Tennessee Board of Parole, [REDACTED] Parsons, TN 38363, [REDACTED] |
| D. Rick Wood, Attorney, [REDACTED] Parsons, TN 38363, [REDACTED] |
| E. Renae Martin, Homemaker, [REDACTED] Savannah, TN 38372, [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] Court of Criminal Appeals of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended application with the Administrative Office of the Courts for distribution to the Council members.

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

Dated: 10-18, 2022.



Signature

When completed, return this application to Rachel Harmon at the Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.



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

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

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

WAIVER OF CONFIDENTIALITY

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

Vance Walker Dennis
Type or Print Name

[Signature]
Signature

10-18-22
Date

021178
BPR #

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

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ABBREVIATIONS

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

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STATEMENT OF THE ISSUES

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

STATEMENT OF THE CASE

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

STATEMENT OF THE FACTS

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

ARGUMENT

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

1. Standard of Review

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

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

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

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

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

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

2. Sufficiency of the Evidence

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

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

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

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

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

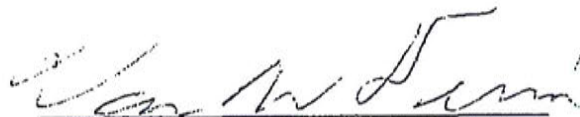
As to Ms. Porter's constructive possession of the controlled substances, there was no proof submitted to the jury that would give a reasonable trier of fact reason to find that Ms. Porter ever had

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

CONCLUSION

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

Respectfully submitted,



VANCE W. DENNIS (BPR# 021178)

Attorney for Appellant
McGee & Dennis
Attorneys at Law
55 Court Street, Suite B
Savannah, TN 38372
(731) 925-1025

CERTIFICATE OF SERVICE

I, Vance W. Dennis, Attorney for the Appellant, Gloria A. Porter, hereby certify that I have forwarded a true and exact copy of the foregoing to Paul G. Summers, Attorney General, State of Tennessee, 425 5th Avenue North, Nashville, TN 337243, by U.S. Mail, postage prepaid.

This the 28th day of March, 2005.

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

VANCE W. DENNIS
Attorney for Appellant

IN THE CIRCUIT COURT OF HENRY COUNTY, TENNESSEE

STATE OF TENNESSEE

VS

NO. 15448

TINA LYNN SZABO

RESPONSE TO MOTION TO SUPPRESS SEARCH WARRANT

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

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

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

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

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

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

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

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

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

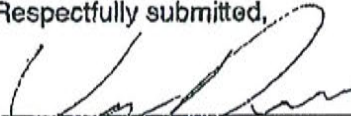
*The last clause of Section 40-507 T.C.A. provides that the warrant is void after five days unless executed. The warrant in the case at bar was certainly executed within the period of five days; that is, the search was made and conducted within that time. The failure of the officer to make the return within the five day **258 period was merely a failure on his part to carry out a ministerial duty. His failure to perform this simple act could not and did not in any way affect the validity of the warrant and the execution thereof by the officer. The proof in fact showed that the officer did execute the warrant within the period of five days and that the preliminary hearing was had on the fifth day after the issuance of the warrant. Section 84 on Searches and Seizures in 79 C.J.S. is full authority for the position of the State, which general rule is: 'While it is the duty of the officers executing a search warrant to make a return thereof in the manner provided by law, as a general rule the failure of an officer to make a return of a search warrant properly issued and served will not invalidate the search warrant, or a search and seizure made thereunder, even where the statute requires the return within a certain time, the return being merely a ministerial act, which may be performed later, at least within a reasonable time.' *44 In *Rettich v. U. S.*, 1 Cir., 84 F.2d 118. Defendants contended that the evidence obtained by State Officers was inadmissible because it was not returned to the Court issuing the warrant. The Court held that the return on a search warrant is a ministerial act and can be made within a reasonable time. *Evans v. U. S.*, 8 Cir., 242 F.2d 534, certiorari denied, 353 U.S. 976, 77 S.Ct. 1059, 1 L.Ed.2d 1137, a case involving prosecution for the possession of intoxicating liquors arising in Tennessee, held that the return of a search warrant is a ministerial act and any failure therein does not void the warrant. *Wince v. State*, 206 Miss. 189, 39 So.2d 882, holds: 'The search warrant in this case was based upon a lawful affidavit, and the search warrant itself was a lawful warrant duly authorizing the officer executing it to make search of the property named therein for the stolen articles described in the warrant. It follows from this that at the time the officer was making the search he was engaged in a lawful act and was doing that which the law justified him in doing. The stolen articles were legally recovered as a result of said search. It would be an anomaly for us to hold that the mere failure of the officer to make his return upon the search warrant would relate back and make unlawful that which the law says was lawful at the time the search was being made and the goods were being recovered. We are unwilling to hold that the failure to make a return on the search warrant invalidates the search and makes the testimony incompetent as to the articles recovered by the search. This is neither good law nor logical reasoning.' *45 *Searches, Seizures and Immunities*, Varon (Bobbs-Merrill, 1961), under Section 11, Return of Search Warrant, states: 'The statutory requirements as to the return of a search warrant, necessity of receipt and inventory are only ministerial, and the failure to comply with these requirements will not tend to invalidate the warrant, nor affect the admissibility*

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

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

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

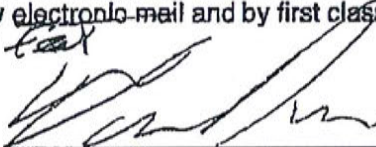
Respectfully submitted,



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

CERTIFICATE OF SERVICE

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



VANCE W. DENNIS

IN THE CIRCUIT COURT OF HENRY COUNTY, TENNESSEE

STATE OF TENNESSEE

VS

NO. 15448

TINA LYNN SZABO

RESPONSE TO MOTION TO SUPPRESS VIDEO

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

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

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

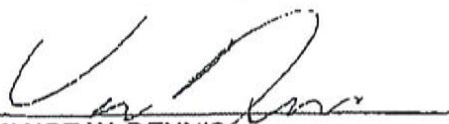
Respectfully submitted,


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FILED 5-1-15 AT 10:40 P.M.
MIKE WILSON, CLERK
BY *Becky Magick D.C.*

CERTIFICATE OF SERVICE

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


VANCE W. DENNIS

IN THE CIRCUIT COURT OF HENRY COUNTY, TENNESSEE

STATE OF TENNESSEE

VS.

NO. 15448

TINA LYNN SZABO

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

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

Propriety of Rule 9 Appeal

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

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

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

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

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

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

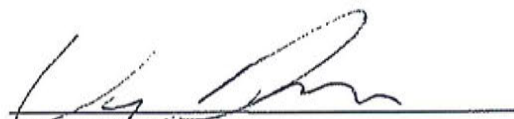
Respectfully presented,



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Assistant District Attorney General
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731-986-5031

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief was served upon Anthony Clark, Attorney for Defendant, 104 N. Brewer St., Paris, TN 38242, by first class U.S. Mail on this the 16 day of November, 2015.



Vance W. Dennis