

The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

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INTRODUCTION

The State of Tennessee Executive Order No. 54 (May 19, 2016) hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in Microsoft Word format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website www.tncourts.gov). The Council requests that applicants obtain the Microsoft Word form and respond directly on the form using the boxes provided below each question. (The boxes will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit your original, hard copy (unbound), completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with your electronic or scanned signature. The digital copy may be submitted on a storage device such as a flash drive that is included with your hard-copy application, or the digital copy may be submitted via email to ceesha.lofton@tncourts.gov. See section 2(g) of the application instructions for additional information related to hand-delivery of application packages due to COVID-19 health and safety measures

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I am currently employed as an Assistant District Attorney for the 18th Judicial District.

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

I was licensed to practice law in Tennessee in 1991.

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.

State of Tennessee

BPR # 014755

License in 1991 - Active Status

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

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

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

Shoney's Inc. (1984-1997)

Operations Manager- Store Management (1984-1986)

EEO Manager – Legal Employment Issues (1986-1992)

Direction of Franchise Operations (1992-1997)

Law Office of Ron Blanton (1998-1998)

Sole Practitioner – Criminal and Civil Practice of Law

18th Judicial District – District Attorney’s Office (1998-2000)

Assistant District Attorney

Criminal Prosecution

Longmire and Blanton, an Association of Attorneys (2000-2003)

Sole Practitioner – Criminal and Civil Practice of Law

18th Judicial District – District Attorney’s Office (2003-Present)

Assistant District Attorney

Criminal Prosecution

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, I have been continuously employed since completion of my legal education.

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

I prosecute for the State of Tennessee all types of violations of the criminal statutes. My practice is 100% criminal law.

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.

Prior to becoming an attorney, I worked in the Captain D's division of Shoney's Inc., in various capacities, from in-store operations and training to human resources. In 1986, I had the opportunity to attend the Nashville School of Law while working full time at Shoney's. At the beginning of my legal career, I was moved to the Shoney's, Inc., corporate office as an Equal Employment Opportunity (EEO) manager. As an EEO manager, I investigated, evaluated and gave employment recommendations to the operations staff concerning employee complaints of unfair treatment, ensuring that employee's rights were heard and acted upon. As a result of my investigations, I represented the company in Equal Employment Opportunity Commission responses and administrative hearings. Due to my knowledge of Shoney's Inc.'s operations and investigation, I also served as the corporate representative in trials, assisting private counsel with the facts and the issues raised.

Beyond my EEO responsibilities, I negotiated lease agreements on real property and equipment and was later promoted to Director of Franchise Operations for the Captain D's division. My responsibilities as Director were all encompassing. I oversaw new franchisees, site selection, training and the overall success of new store development. I had a staff of seven (7) employees who directly reported to me.

At Shoney's Inc., I was exposed to a world that was foreign to my upbringing and life experiences. In my travels across the county, I hired several management employees who were killed over less than \$200.00. A store that I used for training of new franchise's owners was robbed and the young and rising store manager (age 25) and a teenage employee (age 17) were killed by a serial killer over money. Due to my close relationship with the manager and his untimely death, my perspective on life changed, and I began an exit strategy from Shoney's Inc., with the hopes of becoming a prosecutor. I realized that I needed to use my legal training to help those victims of needless crimes.

On January 1, 1998, I open my own general law practice in Gallatin, Tennessee. I represented clients in Domestic Relations matters, including Divorce and Child Custody matters, in Chancery, Circuit and Juvenile Courts. Additionally, I represented criminal Defendants in both General Sessions and Criminal Courts. My practice was about 50% civil cases and 50% criminal cases. I had no administrative assistant, so I produced my own work with little outside help.

In September of 1998, I was hired by Ray Whitley to be an Assistant District Attorney for the 18th Judicial District. I got valuable experience handling cases in the Juvenile, General Sessions and Criminal Courts. I tried several bench trials and jury trials during this period with the

District Attorney's office. My first jury trial involved a twelve-count indictment of a career criminal, with over ninety (90) pieces of evidence. I tried that case without assistance and was able to secure a guilty verdict.

In September of 2000, I left the District Attorney's Office and returned to private practice in Hendersonville, Tennessee. During my second venture into private practice, I handled Domestic Relations, Criminal, Probate and Employment Law matters. I had numerous divorce trials in Chancery and Circuit Courts. During this timeframe, I defended two criminal jury trials which gave me an entirely different perspective on the criminal justice system. While most of my cases were criminal defense, I also began to write appellant briefs for some attorneys in our office. I often attended the oral arguments on these matters to assist the appellant's attorney.

In August of 2003, I had the opportunity to return to the District Attorney's office. This is where God meant for me to be at that time. Since my return to prosecution, I have served as the Drug Prosecutor along with being the Drug Court Gatekeeper. I have served as the Child Sex Abuse Prosecutor and tried several Child Sex Abuse cases before a jury. For the past ten (10) years, I have served as the Violent Crimes Prosecutor. I have tried over twenty (20) homicide trials in the past ten years, including cases of high profile. Along with General Whitley, I tried State of Tennessee vs. Lindsey Brooke Lowe, 552 S.W.3d 842 (Tenn. 2018). In this case, the Supreme Court of Tennessee changed the Exclusionary Rule. The Supreme Court of Tennessee found that when a clerical error occurs on a search warrant, the State must show the following: (1) the technical noncompliance was the result of a good-faith error and (2) the error did not result in any prejudice to the defendant.

With my experience, I have had the opportunity to try homicide cases, burglary cases of all types, sexual assault cases involving adult and child victims, drug cases, white collar theft, theft and shoplifting trials. These various trials and the issues that present themselves have given me vast experience in advocating motions, trials and post-conviction issues that occur daily in our criminal justice system. One of the most valuable lessons I have taken from interacting with victims of crimes, is listening to their stories and how they have been affected. It has given me a raw view into the hearts of people. Listening to and researching the facts and applying those in the courtroom is critical to a successful litigator.

I have never had the privilege of having a paralegal or legal assistant help me in my preparations. I often have other attorneys in the office review and proof my work before filing any matters in court. I can say that my work product is truly my own.

My knowledge and experience have given me the opportunity to assist the new attorneys that are hired in our office. Additionally, I coordinate the schedules and evaluations of our high school interns during their time in our office.

Beginning with my first job, I worked a minimum of 55 hours a week, 6 days a week and have

carried that work ethic throughout my career. I'm often the first attorney at the office and among the last to leave. My dedication to my family, work product, work ethic, work quality, work family and at the center my God, is who I am and is who I strive to be daily.

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

I prosecuted, along with District Attorney Ray Whitley, in the Matter of the State of Tennessee vs. Lindsey Brooke Lowe, 552 S.W.3d 842 (Tenn. 2018). In this case the Supreme Court of Tennessee adopted a revision to the Exclusionary Rule. The Supreme Court of Tennessee changed the Exclusionary Rule. The Supreme Court of Tennessee found that when a clerical error occurs on a search warrant, the State must show the following: (1) the technical noncompliance was the result of a good-faith error and (2) the error did not result in any prejudice to the defendant.

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.

Not applicable. I have spent most of legal career working as an employee of the State of Tennessee.

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.

Not applicable, I have not served in any of these capacities.

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

Not applicable

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.

Not applicable, I have never applied for judgeship to the Governor's Council for Judicial Appointments or any predecessor or similar commission or body.

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.

Lurleen B. Wallace Junior College, Andalusia, Alabama, 1979-1980, Business no degree
Campbellsville College, Campbellsville, Kentucky, 1980-1983. Bachelor of Science, Business
*Alumni Award for Outstanding Senior Male Student, Chief Justice of College Honor Board
Nashville School of Law, Nashville, Tennessee, 1986-1990, Doctor of Jurisprudence
*Chosen by my classmates to speak at Graduation

PERSONAL INFORMATION

15. State your age and date of birth.

I am 59 years of age. My date of birth is [REDACTED] 1961.

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

I have lived continuously in the State of Tennessee for thirty-six (36) years.

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

I have lived continuously in Sumner County for twenty-eight (28) years.

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

I am currently registered to vote in Sumner County, Tennessee.

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

Not applicable.

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. I have never pled guilty or been convicted or placed on diversion for violation of any law, regulation or ordinance other than minor traffic offenses.

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

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

I have responded to one disciplinary inquiry with Board of Professional Responsibility over a fee dispute. This matter was administratively closed with a short time.

I have been sued three (3) times in relation to my current job as an Assistant District attorney, two occasions in Federal Court and once in State Court. Each of these matters were dismissed

because of immunity provisions in the law.

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.

I have never had a tax lien or other collection procedure instituted against me by federal, state, or local authorities or creditors in the past five (5) years,

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

I have never filed for bankruptcy personally or in any business situation.

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

Yes, Commonwealth of Kentucky vs. Ron Blanton (1983), I was charged at age twenty-two (22) for criminal trespass.

I attended a gathering at a house which was under remodeling. When I realized the circumstances, I immediately left. I was on the property for less than five (5) minutes total. The case was dismissed without a hearing.

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.

Shepherd Leader of Community Church of Hendersonville, 2020

Living Sent Ministry, 2018-2020

Vanderbilt Medical Center Kidney Patient Advisory Board, 2019-2020

Donor Services of Tennessee, Ambassador, 2018-2020

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. I have never belonged to any organization, association, club or society that limits its membership to those based on race, religion, or gender.

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.

Sumner County Bar Association, 1998-present, I served as president of the Sumner County Bar in 2003-2004.

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.

President of the Sumner County Bar, 2003-2004.

Office Anchor Award by my co-workers for the ability to maintain calm during a storm.

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

Not applicable. I have not published any legal articles or books.

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

“Lindsey Lowe, A double infant homicide case study.” I taught this course at the National Homicide Conference for the Regional Organized Crime Information Center in Little Rock,

Arkansas in September 2019.

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 applied for the General Sessions Judge position in Sumner County in 2016. This was a new Judgeship created by the Sumner County Commission. The commissioner's appointed the new Judge. I was not selected.

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

No. I have never been a registered lobbyist.

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

I have attached two writing samples to this application. I composed both of these works.

ESSAYS/PERSONAL STATEMENTS

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

I am seeking the nomination as Judge of Court of the Criminal Appeals to bring to the court a fresh perspective from the eyes of someone who works in the trial courts daily addressing all types of issues in criminal jurisprudence. As an attorney in private practice and as a prosecutor for the past 22 years, I have prepared and practiced on both sides of the courtroom. I want to challenge myself and those around me to listen to and study the facts, research the law and respond accordingly, while ensuring justice for all Tennesseans.

I want to enhance my own legal knowledge and abilities and push myself to be a better practitioner. I feel that as Judge, I will be able to share my knowledge and experience with others. Most importantly, I want to uphold the integrity of the criminal justice system.

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 my role as an Assistant District Attorney, I am not allowed the opportunity to perform pro bono work. However, I do participate in speaking in Law Day Classes and speaking to various civic organizations and classrooms in Sumner County about the law and especially about the programs that the District Attorneys General Conference produce such as “Meth is Death” and “What’s the Rush?”. I have participated for over ten (10) years in the 6th District Mock Trial competition as Judge, as well as serving on the grading panel for the Volunteer State Community College Mock Trial Competition.

As a private attorney in the years 2001, 2002 and part of 2003, I performed pro bono legal work for a non-profit company that manufactured housing framework for Habitat for Humanity

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

I am seeking to become a Judge on the Court of Criminal Appeals for the Middle Section of Tennessee. The Criminal Court of Appeals reviews the criminal appeals that arise from the Circuit and Criminal Courts and examines the issues that are set out before the Court. There are currently 12 Judges on the Court of Criminal Appeals.

Having experience on both sides of a trial in my career, I will bring a unique appreciation of the preparation required for trial, plea negotiations, the trial itself as well as issues that arise during litigation. I will bring to the Court knowledge and an understanding of the daily issues that each case presents because I will have experienced them myself. Furthermore, it is my practice to review criminal law issues daily by reviewing new opinions as they are released by the Courts.

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 serve as an ambassador for the Donate a Life Foundation of Tennessee. In that role, I have spoken to several organizations to promote organ donation. I am a recipient of a kidney transplant and am active in seeking new donors. I counsel many people in my community who are on a transplant list on what to expect leading up to and through the process.

I serve on the Vanderbilt University Medical Center’s Patient Advocacy Board for Kidney Patients. On this board, we help identify issues that patients face while going through the process from diagnosis to medication side effects, to dialysis, to transplant.

I currently serve as a Shepherd Leader at Community Church of Hendersonville. The Shepherds are the leaders of the church, providing spiritual leadership to the Church body through God’s

guidance.

As Judge, I will continue my efforts to promote Organ Donation in every way possible. I feel Organ Donation saves many lives and spares families from the loss of loved ones. Often this gives the recipients a new lease on life. There are currently over three thousand (3000) Tennesseans waiting for that new lease on life and over ninety percent (90%) of that number are awaiting a new kidney. As Judge, I will continue to raise awareness to donation opportunities.

Moreover, as a Judge, I want to speak to as many law groups and technology professionals as possible on the advancement of technology usage in the courtroom to greatly enhance the quest for justice for all.

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 realized early in my life that athletics and academics would play a huge role in my attending college. I was fortunate enough to receive a baseball scholarship that, combined with academic aid, allow me to attend college and become the first in my family to graduate from college.

During my years of playing competitive sports, I realized how important it was to perfect your own skills while being part of a team organization. Every person had a job to do and had to rely on each other to be the best at their position, while holding each other accountable. Team sports is a great character builder. I think it helps those in the legal profession.

As an attorney, I have worked in the corporate environment and as a sole practitioner and had to ensure my work habits and work product were on point in order to provide for my family, my team.

Currently, as an Assistant District Attorney, I strive daily for our prosecution team to do its best to see that justice is applied fairly and consistently for the citizens of our District and State. I understand that listening to your work team is crucial, but one must also not be afraid to state his or her opinion based on their review of the facts and study of the law. In the end, we must keep the sanctity of the team without sacrificing our own personal perspective.

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

Yes, I would follow the law (rule or statute) at issue.

In my career as an Assistant District Attorney, I have had the unpleasant opportunity to see this scenario play out on several occasions. The one case that is the most drastic issue of this type occurred when charges were filed in the early 2000's against a sole owner of a construction company. The victims were a young couple who had put their entire available financial resources together to build a childcare facility.

When the contractor took the couple's \$200,000.00 and poured a concrete slab and then failed to do anything else on the project, the couple went to the police and reported a theft. As the case moved through the system, I was assigned the case. Weeks before the trial was to begin, I discovered that there was a case which stated that the contractor could not be prosecuted for theft if the contractor had done any work on the project (that law has now been replaced). The defense attorney was unaware that this was the law.

After immediately meeting with the victims and informing them of the law in Tennessee, I had a duty to notify defense counsel of this law and to notify the court that the State of Tennessee would dismiss the charges against the defendant. To this day, I disagree with the law in effect however, it was my job, duty and responsibility to research the law and do the right thing although I knew it was devastating to the young victimized couple.

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. William Lamberth, Tennessee House Majority Leader, Attorney, [REDACTED]
B. Honorable Dee David Gay, Criminal Court Judge, 18 th Judicial District, Attorney, [REDACTED] [REDACTED]
C. Honorable Ray Whitley, District Attorney General, 18 Judicial District, Attorney, [REDACTED] [REDACTED]
D. Tim Rathert, Sales and Marketing, Quaker Foods, Non-Attorney, [REDACTED]
E. Darren Frank, Principal, Merrol Hyde Magnet School, Non-Attorney, [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] Criminal Court of Appeals, Middle Section 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 4, 2020.

/s/ Charles Ronald Blanton

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.

Charles Ronald Blanton
Type or Print Name

/s/ Charles Ronald Blanton
Signature

October 4, 2020
Date

014755
BPR #

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.
<u>Not applicable</u>

ARGUMENT

Diminished capacity may be shown by testimony demonstrating that the defendant, due to mental disease or defect, lacked the capacity to form the requisite *mens rea*. See *State v. Roland*, No. E2002-00927-CCA-R3-CD, 2003 WL 21983024 (Tenn. Crim. App. Aug. 21, 2003) (unreported), appeal denied (Tenn. 2003). Specifically, the defendant must prove that (1) he lacked the capacity to form the requisite *mens rea* and (2) he lacked that capacity because of a mental disease or defect. See *State v. Idelfonso-Diaz*, M2006-00203-CCA-R9CD, 2006 WL 3093207, at *3 (Tenn. Crim. App. Nov. 1, 2006) (unreported), appeal denied (Tenn. 2007). “Diminished capacity is not considered a justification or excuse for a crime, but rather an attempt to prove that the defendant, incapable of the requisite intent of the crime charged, is innocent of that crime but most likely guilty of a lesser included offense.” *State v. Hall*, 958 S.W.2d 679, 688 (Tenn. 1997), cert. denied, *Hall v. Tennessee*, 524 U.S. 941, (1998) (citation omitted). As such, the defense should not put on proof of diminished capacity itself but rather present the evidence as “relevant to negate the existence of the culpable mental state.” *State v. Faulkner*, 154 S.W.3d 48, at 56 (Tenn. 2005), cert. denied, *Faulkner v. Tennessee*, 547 U.S. 853 (2005).

An emotional state or mental condition is distinct from a mental disease or defect. See *State v. Faulkner*, 154 S.W.3d at 58. Indeed, evidence that a defendant has a personality disorder, a particular emotional state or mental condition is insufficient to support a conclusion that the defendant lacked the capacity to form the *mens rea*. See *State v. Robinson*, 02-C-01-9608-CR-0028, 1997 WL 746435, at *6 (Tenn. Crim. App. Dec. 3, 1997) (unreported); *State v.*

Cross, 03C01-9805-CC-00181, 1999 WL 592225, at *11 (Tenn. Crim. App., Aug. 9, 1999) (unreported), appeal denied (Tenn. 2000), (noting that “a particular emotional state or mental condition” is insufficient to establish the inability to form a requisite culpable mental state). The Tennessee Supreme Court has explained:

[a]s did the Court of Criminal Appeals in this case, we emphasize that the psychiatric testimony must demonstrate that the defendant's inability to form the requisite culpable mental state was the product of a mental disease or defect, *not just a particular emotional state or mental condition*. It is the showing of a lack of *capacity* to form the requisite culpable mental intent that is central to evaluating the admissibility of expert psychiatric testimony on the issue. *State v. Shelton*, 854 S.W.2d 116, 122 (Tenn. Crim. App. 1992), perm. app. denied (Tenn. 1993).

Id. at 690 (Tenn. 1997) (first emphasis added).

An expert witness may be utilized to demonstrate diminished capacity. An expert witness may testify if his “scientific, technical or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue....” Tenn. R. Evid. 702. Tennessee’s Rule of Evidence requiring that an expert’s testimony must *substantially* assist the trier of fact sets forth a higher standard than its companion Federal Rule of Evidence which requires only that the testimony will help the trier of fact. *See* Fed. R. Evid. 702. The expert may not testify as to an opinion or inference “if the underlying facts or data indicate lack of trustworthiness.” Tenn. R. Evid. 703.

As to diminished capacity, if an expert does not specifically testify that the defendant lacked the capacity to form the *mens rea* required for the charged offense due to a mental disease or defect, then the expert's testimony is irrelevant and inadmissible. *See State v. Idellfonso-Diaz*, M2006-00203-CCA-R9CD, 2006 WL 3093207, at *4. Testimony that the defendant suffered from "serious psychiatric disorders" at the time of the event and that the defendant's capacity to form the culpable mental state was "impaired to some extent" is insufficient. *Id.* Testimony that a mental disease or defect resulted in reduced capacity or impairment, similarly, is insufficient to negate the *mens rea*. *See id.* Furthermore, testimony that it was possible that a defendant "did not premeditate killing the victim but instead acted on impulse," is not sufficient to show that the defendant was suffering from a mental disease or defect for purposes of diminished capacity. *See State v. Robinson*, 02-C-01-9608-CR-0028, 1997 WL 746435, a *7. Moreover, testimony that, "[a] defendant's fear of another person, such that he or she fears reprisal for refusing to commit a crime at the direction of the person feared, is not" sufficient to establish mental disease or defect. *See State v. Hatcher*, 310 S.W.3d 788, 807 (Tenn. 2010).

In *State v. Cross*, 03C01-9805-CC-00181, 1999 WL 592225 (Tenn. Crim. App. 1999), the Court of Criminal Appeals of Tennessee upheld a trial court ruling that a defense expert could not testify as to the defendant's capacity to kill and kidnap. The appellate court first reviewed the Tennessee Supreme Court case of *State v. Hall*, 958 S.W.2d 679 (Tenn. 1997), for comparison:



The evidence proposed by [Dr.] Hall failed in three respects. First, the expert did not propose to testify that Hall “lacked the capacity to premeditate and deliberate the killing because of a mental disease or defect.” *Id.* at 691. Second, the expert spoke only abstractly and generally about typical persons with personality types similar to Hall's type, instead of discussing “the capacity of the particular defendant on trial.” *Id.* Third, the “personality type and character traits which [the expert] gleaned from the test results and a single three hour interview” do not equate to proof of “a defendant's *capacity* to form the mental intent.” *Id.* (italics in original).

Id. at *11. Then, upon reviewing the expert's report in *Cross*, the appellate court stated:

First, the report does not clearly indicate whether the defendant was hampered by any “mental disease or defect.” Certainly, the defendant has limitations and problems, including diagnosed personality disorders; however, he is neither psychotic, mentally retarded, nor suffering from debilitating brain injury. Given the *Hall* requirement that expert testimony of this type be grounded upon mental disease or defect, the proffer fails to show that the evidence is relevant. *See* Tenn. R. Evid. 402.

Secondly, and in this case more importantly, the Engum report set forth no opinion that the defendant lacked the legal culpability to commit the offense on trial, except for the opinion that his criminal intent was influenced by the use of

drugs and alcohol. The report is devoid of any evidence that any other condition- be it his chemical dependency, personality disorder, learning disability, or anything else- resulted in the defendant's incapacity to form the requisite intent to commit the offenses. As such, the expert evidence as depicted in the report was not of substantial assistance to the jury. *See* Tenn. R. Evid. 702. The trial court was correct in isolating the defendant's pre-crime drug and alcohol use as the sole factors which may have influenced his capacity to fulfill the mental elements of murder and kidnapping.

Id. at *12 (Tenn. Crim. App. Aug. 9, 1999).

In *State v. Faulkner*, 154 S.W.3d at 56-57, the Tennessee Supreme Court considered whether to admit the testimony of a psychologist who would have testified, not that the defendant suffered from a mental disease or defect at the time of the event, but rather that the defendant's "ability to suppress his emotions was impaired." Because the psychologist's "testimony was not offered to show that [the defendant] lacked the capacity form the requisite intent because of a mental disease or defect... [h]is proposed testimony...did not meet the prerequisites of [*State v.*] *Hall.*" *Id.* at 57.

The testimonies which may be offered by Dr. Kenner and Dr. Auble in the instant case, like the cases described above, should be excluded. Like the expert testimony proposed in *State v. Hall*, 958 S.W.2d 679 (Tenn. 1997), neither Dr. Kenner nor Dr. Auble have provided any statement, written or oral, that their testimonies will reflect that the defendant lacked the capacity

to form the intent necessary for first degree murder. Furthermore, the defendant's alleged dissociative coping mechanisms for "painful and embarrassing experiences" in childhood, and her "passivity in the face of a powerful male figure" which rendered her "ill equipped to defend herself on" an alleged "date gone bad," do not establish that she lacked the capacity to form the necessary intent when she committed the murders. *See* Kenner Report (undated) p. 16. Moreover, a suggestion that she suffered from dissociative symptoms post-partum, and that because of her post-partum medical condition she was "particularly vulnerable to suggestion, manipulation, and subversion of her reality" during her questioning by Det. Malach, have no bearing on the question of whether she lacked the capacity to form the requisite *mens rea* at the time of the murders. *Id.* p. 17.

Indeed, as in the case of *State v. Cross*, 03C01-9805-CC-00181, 1999 WL 59225, at *12, Dr. Kenner "does not clearly indicate whether the defendant was hampered by any 'mental disease or defect.'" While the defendant may have suffered emotionally embarrassing childhood events, she "is neither psychotic, mentally retarded, nor suffering from debilitating brain injury." *Id.* Similarly, there is no statement by Dr. Kenner in his report, nor by Dr. Auble in her report, *see* Kenner and Auble Reports, that the defendant's alleged dissociative condition at the time of parturition "resulted in the defendant's incapacity to form the requisite intent to commit the offense. As such, the expert evidence...[is] not of substantial assistance to the jury," *State v. Cross*, 03C01-9805-CC-00181, 1999 WL 59225, at *12.

Like the expert testimony in *State v. Faulkner*, 154 S.W.3d 48, much of Dr. Kenner's and Dr. Auble's testimonies seem directed at the defendant's emotional problems, or medical

problems, which are not relevant for purposes of diminished capacity. *See* Kenner and Auble Reports.

As noted by the Tennessee Supreme Court:

Society is comprised of myriad individuals with diverse personalities and temperaments who are jointly and severally bound by society's common codes of conduct and responsibility. The mere fact that one is more apt, by personality type, to become emotional in response to a particular stimulus does not provide a means for that person to be absolved from the same responsibility to which the law holds another who might be less apt to respond as passionately to the same stimulus. If it did, then each person would be the law unto him or herself based solely upon his or her particular personality makeup.

State v. Hall, 958 S.W.2d 679, 691-92 (Tenn. 1997).

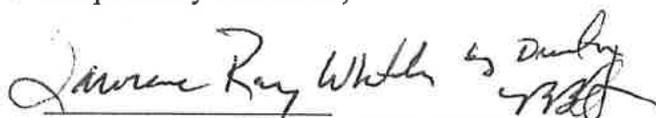
In short, while Dr. Kenner's report goes into detail as to the defendant's dissociative symptoms at the time of parturition, *see* Kenner Report, pp. 16-17, nowhere in his report does he suggest that her medical condition or dissociative symptoms amount to a *mental disease or defect* resulting in an incapacity to form the requisite *mens rea*. In fact, in a letter written by Dr. Kenner to defense counsel, dated August 31, 2012, Dr. Kenner explains that the defendant's alleged dissociative symptoms experienced during parturition were due to "her medical

condition.” *See* Kenner Letter, Aug. 31, 2012, p. 2. Dr. Kenner does not suggest that those dissociative symptoms themselves were indicative of or caused by mental disease or defect.

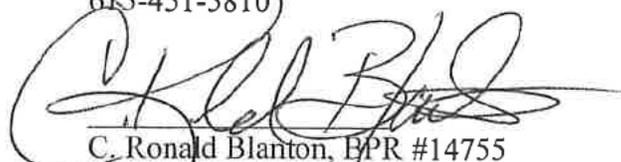
Additionally, any suggestion that the defendant would react in a certain manner upon parturition due to a childhood history of “urinary tract infections, urological surgical procedures, and bladder spasms,” which cause her to fear authority figures and cope with painful and embarrassing experiences with dissociative defenses, *see* Kenner Report, p. 16, would mislead the jury because it has no bearing on the defendant’s capacity to form the necessary intent. Therefore, even if Dr. Kenner’s testimony were relevant, it is inadmissible. *See* Tenn. R. Evid. 403.

WHEREFORE, based on the foregoing, the State of Tennessee respectfully requests that the Court exclude any and all testimony by Dr. William Kenner and Dr. Pamela Auble during trial.

Respectfully submitted,



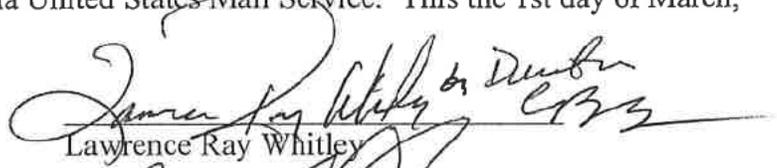
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CERTIFICATE OF SERVICE

I hereby certify that the above styled Motion *in Limine* to Exclude Expert Testimony has been forwarded to John Pellegrin, Attorney for the Defendant, by delivering said motion via hand or by placing it with parcel paid via United States Mail Service. This the 1st day of March, 2013.

A handwritten signature in black ink, appearing to read "Lawrence Ray Whitley" with a flourish at the end. The signature is written over a horizontal line.

Lawrence Ray Whitley

A handwritten signature in black ink, appearing to read "C. Ronald Blanton" with a flourish at the end. The signature is written over a horizontal line.

C. Ronald Blanton

**IN THE CRIMINAL COURT FOR SUMNER COUNTY,
TENNESSEE AT GALLATIN**

LINDSEY BROOKE LOWE

VS.

STATE OF TENNESSEE

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**2011-CR-834 (ORIG)
2019-CR-817 (PCR)**

**STATE'S RESPONSE TO PETITIONER'S PETITION FOR POST-CONVICTION
RELIEF**

Comes now the State of Tennessee and responds to the Petition for Post-Conviction

Relief in the above styled matter as stated below.

The State avers that paragraphs 1-5 of the Petition are true and correct.

Under the claim for relief request in paragraph six of the petition, the State avers that this ground is waived as failure to raise this issue on appeal results in waiving these issues for Post-Conviction Relief consideration pursuant to T.C.A. 40-30-106.

SECTION A
THE PETITIONER'S ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL
COUNSEL

Under claim for relief one, that trial counsel failed to independently investigate, consult and acquire the service of a properly qualified medical expert, obstetrician, gynecologist or medical trauma to testify, the State denies that trial counsel was ineffective. No prejudice was suffered by the Defendant. The State denies that trial counsel was deficient. Defendant was not prejudiced and the State demands strict proof thereof.

Counsel for the defense hired Dr. William Kenner, a psychiatrist and medical doctor, who testified about the trauma and the blood loss suffered by the Defendant during the birth of her two infant sons. Dr. Kenner testified how the blood loss could affect the Defendant's mental health, especially during the time she gave a statement to authorities. Whether Dr. Kenner overextended himself and his opinion during testimony is speculative in nature, and whether his credibility was lost to the jury is within the privacy of the jury room.

Under claim two, that Trial Counsel failed to advance a properly qualified expert to testify the Petitioner Lowe's statement was unreliable based on Detective Malach's use of the Reid technique, the State denies this claim and demands strict proof thereof.

During the trial, the defense proffered Dr. Kenner as an expert in Reid technique interviewing style. Trial counsel for the Defendant did advance the qualifications of Dr. Kenner as a Reid expert, however, the Court denied Dr. Kenner's testimony. Additionally, Detective Malach testified that though his interview had some Reid-based questions, he used a combination method of questioning that has evolved over his career. The assertions advanced under claim two are fraught with speculation and second-guessing and are not proper claims under the Post-Conviction Procedure Act.

Under claim of relief three, the Defendant claims that trial counsel failed to investigate, consult and hire an independent forensic medical examiner to accurately testify about the cause of death of the victims in this case. The State denies this claim for relief and demands strict proof thereof.

The State submits that at the time of the burial of both babies, there was no report as to the cause of death of the two babies. Trial counsel will testify that at the time of the funerals the cause of death had not been clearly established and there was no apparent necessity for hiring an independent forensic medical examiner. Trial counsel will state that at that point in time he did not think the cause of death would be an issue in this matter.

Petitioner has spent a great deal of time speaking about the medical examiner speaking with the detective as to the facts surrounding the discovery of the babies, when in fact in order to get a full picture of the scene it would be important for the medical examiner to gather information regarding the scene, and circumstances surrounding the recovery of the two babies.

The State submits that this is proper protocol for a medical examiner to follow and is used in nearly all autopsies by forensic pathologists. Petitioner has ignored the fact that the undisputed testimony at trial was that both infants were birthed in a commode, both were silent throughout the course of the childbirth, and both were abandoned in a laundry basket of dirty clothes.

Under claim of relief four, the Defendant claims that trial counsel failed in their performance by not hiring a psychological trauma expert regarding the Defendant's neurological

and psychiatric responses to trauma from childhood throughout her life and to connect her of medical trauma to the trauma of pregnancy and childbirth. The State denies this claim and demands strict proof thereof.

The State submits that Dr. Kenner in his testimony went into extreme detail about the Defendant's childhood trauma and extreme issues of her chronic bladder and urologic issues and side effects. Dr. Kenner also went into how the trauma of the Defendant's trauma of dealing and caring for her mother for an extended period had an effect on her pregnancy and childbirth. Dr. Kenner also went into detail about this effect of the massive blood loss during childbirth and how that could affect Ms. Lowe. Dr. Kenner also testified about how having to care for her Mother (cancer) also caused her great trauma and anxiety.

Under claim for relief five, the Defendant claims that trial counsel failed to prepare Dr. Pam Auble to testify at the suppression hearing. The State denies this claim and demands strict proof thereof.

Dr. Auble was hired as a psychologist to examine and test the Defendant. She was not hired to give a psychological analysis of Ms. Lowe's mental state at the time of the events.

Her role was to supply Dr. Kenner with results of the psychological testing to assist Dr. Kenner in his evaluation and treatment of the Defendant. She testified as to what she was hired to do.

As to claim for relief six, the Defendant failed to properly prepare experts, Dr. Auble and Dr. Kenner, for trial testimony. The State denies this and demands strict proof thereof.

Trial counsel met with both doctors several times prior to trial and spoke in detail with them about their testimony. They met separately with the doctors and met with them together in order to prepare for trial. They both knew the theory of the case and were prepped before the trial, but Petitioner seems to suggest that Trial Counsel were deficient by not telling their expert witnesses what to say and how to say it. This cannot be grounds for alleging ineffective assistance of counsel.

As to Claim for relief seven, trial counsel failed to introduce research studies and literature supporting Dr. Kenner's theory of pregnancy denial. The State denies this and demands strict proof thereof.

The State would submit that Dr. Kenner's testimony went into deep discussion about the diagnosis of pregnancy denial, from both a medical and psychological perspective. Unfortunately for the Petitioner the claim of pregnancy denial was contrary to the proof at trial.

As to claim for relief eight, that Trial Counsel failed to raise the question of whether the Petitioner was competent to stand trial based on her behavior, this has been previously determined. The State of Tennessee denies this claim and demands strict proof thereof.

Trial counsel will testify that the Defendant was emotional during parts of the trial but was able to assist in the defense throughout the trial. Trial counsel will state that while the Defendant is quiet, she was able to communicate with them throughout the trial and offer information through the trial.

As to claim for relief nine, that trial counsel failed to make for cause challenges or to use all of their preemptory challenges during voir dire. The State denies this claim and demands strict proof thereof. The State would submit that this issue deals with trial strategy and has been addressed in the appeal process. This is not an appropriate ground for Post-Conviction Relief.

Additionally, the State objects to the mention of an unidentified alternative juror. This is hearsay and not relative to Post-Conviction unless there is some type of misconduct, which is not alleged in the petition.

As to claim for relief ten, that trial counsel failed to object to the State's repeated assertion during voir dire that Petitioner Lowe was not the only party entitled to a fair trial, but the State was also entitled to a fair trial. The State would deny this claim and demands strict proof thereof.

The State relies upon the matter of State vs. Smith, 418 S.W.3d 38 (2013), in which the Supreme Court of Tennessee addressed this issue directly.

“The right to a jury trial envisions that all contested factual issues will be decided by jurors who are unbiased and impartial. In criminal cases the jury is the property of neither a Defendant nor the State. Thus, both the Defendant and the State are entitled to a fair trial by and unbiased and impartial jury.”

To object would have been improper, therefore this issue is without merit.

As to claim for relief eleven, that trial counsel failed to object to assertions by both the State and the Trial Court during voir dire and immediately thereafter that any verdict had to be

unanimous, either a verdict of guilty or a verdict of not guilty. The State denies this claim and demands strict proof thereof.

Under Tennessee law, in a criminal case all verdicts must be unanimous. Unanimous for guilty or unanimous for not guilty in order to have a verdict. If the jury cannot reach a unanimous verdict, there is no verdict and the jury is deadlocked and it results in a non-verdict. This claim is without merit based on the Constitution of the State of Tennessee.

As for claim for relief twelve, that trial counsel improperly advanced the theory that Petitioner Lowe conceived the victims as a result of date rape and should have sought to exclude the admission of that theory from the trial, or in the alternative, trial counsel should have voir dired the jury on date rape and rape in general, the State denies this claim and demands strict proof thereof.

Trial counsel will testify that they were aware that Dr. Kenner was of the opinion that the pregnancy was a result of a "date rape" and that his testimony would be consistent with that theory. Trial counsel will also testify that the decision to not address this issue in voir dire or the

decision to exclude the theory was a tactical trial strategy on their part and therefore beyond the scope of Post-Conviction.

Under claim for relief thirteen, that trial counsel failed to recall the medical examiner in order to move the admission of photographs of Baby Lowe #2 showing the cord wrapped around the baby's neck. The State denies this claim and demands strict proof thereof. The photos were in evidence and speak for themselves.

Under claim for relief fourteen, that trial counsel failed to properly object to the admission of Exhibit #36, a photo of Baby Lowe #1 and Baby Lowe #2 together side-by-side in the laundry basket. The State denies this claim and demands strict proof thereof. Although the babies were not found side-by-side in the laundry basket, they were found in the same laundry basket, one on top of the other.

Under claim for relief fifteen, that trial counsel failed to object and/or to request limiting instruction to the admission of the statements of Detective Malach during the interrogation of Petitioner Lowe, the State denies this claim and demands strict proof thereof.

The Pattern Jury Instruction, which was used during the instructional phase, does state the only evidence that comes from the witnesses, not by the attorney or from questions that law enforcement ask. Evidence is the answers given to those questions.

Under claim for relief sixteen, that trial counsel failed to object to and attempt to prevent Petitioner Lowe's statement from being effectively admitted twice through Detective Malach, the State denies this claim and demands strict proof thereof.

During the testimony of Detective Malach, he testified about the entirety of his investigation, he testified as to parts of the interview of the Defendant, however, under the rule of completeness, the jury was entitled to see the interview in its entirety, the atmosphere, environment, demeanor of the Detective and of the Defendant during the interview process. The mental state of the Defendant was going to be an issue in this case, so it was vital for the jury to hear the detective's observation and to see for themselves the complete interview of Petitioner Lowe as fact finders in this process.

Under claim for relief seventeen, that trial counsel failed to interview critical witnesses in preparation for trial, the State denies this claim and demands strict proof thereof.

During the pendency of this matter, trial counsel was in constant contact with the Defendant's family including her sister. These are the people who lived with the Defendant on a daily basis. Additionally, trial counsel spoke with other people who were associated with the Defendant during the time of her pregnancy up until the time of the birth of the babies.

Additionally, trial counsel were aware that the State had video of the Defendant participating in a wedding and dancing days before the birth of the babies.

Under claim for relief eighteen, that trial counsel failed to object to the improper and unconstitutional jury instructions given by the Court in this case, the State denies this claim and demands strict proof thereof.

The jury instructions were taken straight from the Tennessee Pattern Jury Instructions for Criminal Cases. These instructions were adopted by the Tennessee Supreme Court and were used with all available lesser included offenses.

Under claim for relief nineteen, that trial counsel failed to the State's misconduct during rebuttal closing argument when it vouched for the credibility of it's witnesses, the Trial Court and the fairness of the trial, and encourage jurors to speak for the victims. The State denies this

claim and demands strict proof thereof. Additionally, this issue is waived because it was not addressed in the direct appeals process.

Under claim for relief twenty, that Trial Counsel made egregious factual statements during closing arguments which undermined the credibility of the case and confused the jury, the State denies this claim and demands strict proof thereof. The closing argument by trial counsel was effective and conveyed the trial strategy put forth by the defense.

Under claim for relief twenty-one, the Trial Counsel failed to argue for a verdict on the lesser included offenses where this case is the very definition of Voluntary Manslaughter and heat of passion, the State denies this claim and demands strict proof thereof.

This case was full of proof on the convicted charges and the jury did not have to consider the lesser because they were unanimous on the indicted charges. This issue is waived as it was a ground of appellate review and has been previously determined. (See State vs. Lowe, 2016 Crim. App. Lexus 497) which was affirmed in State vs. Lowe 5525.W.3d842, (2017).

Under claim for relief twenty-two, that trial counsel increased public attention to this case by agreeing to give multiple interviews to the media. The State denies this claim and demands strict proof thereof.

There were interviews given by both parties within the first couple weeks of the incident, but more afterward. Both parties were limited by and adhered to the Rules of Professional Conduct as to what could be said and both parties did stay within those limits. It was and is clear that pre-trial publicity was not a factor in the ability of the Petitioner to get a fair trial in this case.

Both parties were able to voir dire a jury panel after the Court did some preliminary charges to the panel and were able to select a jury panel with which they both felt comfortable.

The trial counsel in the trial were competent, thorough and experienced in the defense of the Defendant, Lindsey Lowe. Their performance was neither deficient nor did it fall below the standard of care required of defense attorneys in this case. Their performance throughout the representation of Petitioner Lowe never caused any prejudice against the Defendant.

SECTION B OF PETITION

Under claim for relief one, that appellate counsel failed to raise all issues previously raised in the Tennessee Court of Criminal Appeals in their brief to Tennessee Supreme Court, the State denies this claim for relief and demands strict proof thereof.

Appellate counsel for the Defendant has a lengthy history of appellate practice. Appellate Counsel's advice to the Petitioner was an appeals strategy and therefore is not a ground for attack on Post-Conviction relief.

Under claim for relief two, that appellate counsel failed to raise the jury instruction issues included in this Petition on Appeal. The State denies this claim for relief and demands strict proof thereof. The jury instructions were from the Tennessee Pattern Jury Instruction for a criminal case.

Under claim for relief three, that appellate counsel misled the Petitioner about the Post-Conviction filing deadline, the State admits this issue and as a result of this claim, the State

would again contend that the entire petition for Post-Conviction Relief should be dismissed upon clear law and the appellate courts' strict adherence to the filing deadline. The filing deadline in this matter was missed by over a month and therefore this petition should be dismissed outright.

Under claim for relief four, that the appellate counsel failed to raise a Batson challenge or appeal, where the issue was preserved by trial counsel's objection, the State denies this claim for relief and demands strict proof thereof.

Under claim for relief five, that trial counsel failed to advance any and all evidentiary and constitutional issue as set forth in Section C, the State denies this claim and demands strict proof thereof.

The Tennessee Court of Criminal Appeals spoke to all issues raised in an emphatic way denying all issues raised.

SECTION C OF PETITION

Under claim for relief one, that the State engaged in misconduct by vouching for the credibility of Detective Steve Malach, Dr. John Hutson, the Court and the fairness of the proceeding, as well as asking jurors to speak for the victims, during its rebuttal closing argument. The State denies these claims and demands strict proof thereof.

These claims of relief should be denied as they were not addressed in the trial nor in the motion for new trial, nor at any level of the appeals process. Furthermore, the comments complained of were made in response to issues raised by Trial Counsel during the defense of Petitioner at trial.

Under claim for relief two, that the State engaged in misconduct by failing to produce materially exculpatory evidence, including impeachment evidence. The State denies this claim for relief and demands strict proof thereof.

The State, through this office, has an open file policy for discovery, and it provided trial counsel its entire file prior to the trial of this matter with the exception of its notes which are not

discoverable. There has been no disclosure by the Petitioner or anyone else as to what the withheld impeachment evidence supposedly is.

Under claim for relief three, that the State engaged in misconduct by using preemptory challenges to excuse prospective African American jurors, the State denies this claim and demands strict proof thereof.

The issue was raised during the course of the trial and was ruled upon by the trial court. The matter was not raised in appeal and thereof is waived.

SECTION D OF PETITION

Under claim for relief one, that the trial court improperly equated reasonable doubt on moral certainty in violation of Petitioner Lowe's rights to due process and a fair trial and instructed the jury that they could convict Petitioner Lowe "as you think truth and justice dictate", the State denies this claim and demands strict proof thereof.

The jury instructions this Court used came from the Tennessee Pattern Jury Instruction for Criminal Trials and have been repeatedly approved by the appellate courts.

Under claim for relief two, that the Court improperly instructed jurors that immaterial discrepancies or differences in the statements of witnesses do not affect their credibility unless it should plainly appear that some witness has willfully testified falsely, the State denies this claim for relief and demands strict proof thereof.

This is directly from the Tennessee Pattern Jury Instruction for Criminal Trials.

Under claim for relief three, that the trial court improperly instructed the jury that it could find Petitioner Lowe guilty if death was merely foreseeable but not intended, the State denies this claim and demands strict proof thereof.

Tennessee's Pattern Jury Instructions for a Criminal Trial Section 42.14 defines cause of death, which applies to all manners of homicides, was adopted by the Court in this matter.

Under claim for relief four, that the Court's instruction to the jury regarding which statements by expert witnesses could be considered as evidence and which statements are not to be considered for the truth of the matter asserted was misleading and improper, the State denies this claim for relief and demands strict proof thereof.

This instruction is from the Tennessee Pattern-Jury Instructions and states that the jury is the sole decider of the credibility of any witness and they are to give experts testimony the same consideration as any witness. It is up to the jury to decide whether they believe their testimony and choose to rely upon it.

Under claim for relief five, that the Court improperly instructed the jury that it must first determine Petitioner Lowe's capacity to form a culpable mental state and only then could they consider what her mental state was at the time of the offense, the State denies this claim and demands strict proof thereof.

Under claim for relief six, that the Court improperly and incorrectly instructed the jury that in order to consider a lesser-included offense, the jury must unanimously find Petitioner Lowe not guilty of the greater offense, the State denies this claim for relief and demands strict proof thereof.

This argument is moot as the jury found Petitioner Lowe guilty of the greater charge in each count of the indictment and had no reason to consider the lesser included charges.

Under claim for relief seven, that counts one and two of the indictment, charging Petitioner Lowe with First-Degree Murder in Perpetration of a Felony, Aggravated Child Abuse, were defective and the instruction lessened the State's burden of proof by eliminating an essential element of Felony Murder, the State denies this claim for relief and demands strict proof thereof.

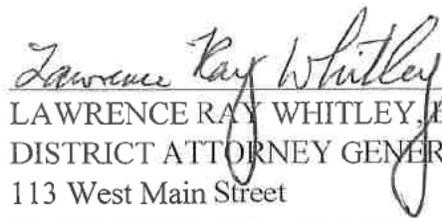
This issue was not raised at the Trial Court level nor at any appellate level and is therefore waived.

The State requests that most of the claims raised in this Petition for Post-Conviction Relief are issues that were not raised in any other court prior to this Petition. Post-Conviction is not intended to serve as an additional avenue to raise evidentiary issues when those issues were not raised or raised and ruled on by an appellate court.

The State contends that most, if not all, of the claims in this petition for post-conviction relief have been previously considered or waived and therefore should be stricken from the Petition and dismissed completely.

The State would further submit that an evidentiary hearing on the claims of ineffective assistance of counsel should be conducted.

Approved for entry:



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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been mailed to Kim Hoddy at 40 Music Square E, Nashville, TN 37203.

This the 12TH day of June, 2020.

C. Ronald Blanton