

**The Governor's Council for Judicial Appointments**

**State of Tennessee**

***Application for Nomination to Judicial Office***

Name: Alex E. Pearson

Office Address: 226 S. Depot St., Rogersville, TN 37857  
(including county) Hawkins County

Office Phone: 423-293-3360 Facsimile: 423-293-3362

Email Address: [REDACTED]

Home Address:  
(including county) [REDACTED]

Home Phone: [REDACTED]

Cellular Phone: [REDACTED]

**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 [laura.blount@tncourts.gov](mailto:laura.blount@tncourts.gov).

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

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

I am currently a Circuit Court Judge for the Third Judicial District and have served in this office since the start of my term on September 1, 2014.

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

I was licensed to practice law in the State of Tennessee in 2006 and my BPR number is 025630.

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.

I am licensed to practice law in Tennessee and have been since 2006. My license is active, and my BPR number is 025630.

I have not applied to practice in any other states.

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 not been denied admission to, suspended, or placed on inactive status in this or any other 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).

I am currently a Circuit Court Judge for the Third Judicial District and have served in this office since the start of my term on September 1, 2014.

Prior to that, I was employed by the District Attorney General's Office for the Third Judicial District and had been employed there since graduating from law school in 2006.

I am also the Founder and President of Pearson Manufacturing, LLC, a small family business.

I currently operate a small hay production farming operation consisting of selling round bales of hay to a handful of customers who have purchased hay from me for approximately 10 years.

Previously, I operated a small cattle-farming operation and assisted in other farming operations. I was also employed by East Tennessee State University as a supervisor in a computer lab and a technician in other labs.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

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

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

I have not practiced law since being elected Circuit Court Judge in 2014.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Council needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Council. Please provide detailed information that will allow the Council to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application.

During my eleven plus years' service as Circuit Court Judge, Part 1, I have presided over numerous criminal jury trials in multiple counties ranging from First-Degree Murder all the way down to C misdemeanor Driving Without a License and a host of things in between: I have presided over jury trials for different types of homicide, various sexual offenses, property offenses, various felony and misdemeanor crimes against a person, multiple driving offenses, and others. I have accepted hundreds of guilty pleas on all levels of criminal activity. In addition, I have presided over numerous motions to suppress, motions for bond reduction, motions to dismiss, motions for specific discovery, and numerous other types of motions. I have presided over various criminal appeals from both General Sessions Court as well as Juvenile Court. I have reviewed numerous search warrants and judicial subpoenas for law enforcement as part of their criminal investigations.

I, also, have presided over hundreds of civil cases including civil jury trials, bench trials, and

civil appeals from General Sessions Court and Juvenile Court. Further, I have presided over various Chancery Court Cases by interchange or by designation.

I currently serve on a Three Judge Panel case that originated in Davidson County.

During my eight-year prosecutorial career, I handled nearly every type of criminal case. I prosecuted criminal offenses ranging from speeding to First-Degree Murder. My prosecution experience includes multiple Murders, several Attempted Murders, Child Rapes, Aggravated Sexual Batteries, as well as numerous Aggravated Burglaries, Robberies, Kidnappings, Felony Thefts, Felony Driving Under the Influence, and a whole host of other felonies and misdemeanors in Criminal Court. I have also handled numerous criminal cases of all types in General Sessions Court and Juvenile Court.

As for jury trial experience as a prosecutor, I tried jury trials including Child Rape; Aggravated Assault; Felony Theft; Felony Driving Under the Influence; Resisting Stop, Frisk, Halt, Arrest, or Search; and Leaving the Scene of an Accident. I was also a key member in a two-man prosecution team in both preparation and trial that successfully prosecuted serious cases including First-Degree Murder, Felony Drug Possession, and a difficult Child Rape case that had been unsolved for nearly twelve years. I have prepared countless numbers of cases for jury trial only to have the defendant plea guilty just before trial.

I represented the State in numerous motions on issues such as Lack of Probable Cause, Defective Search Warrant, Statute of Limitations, Double Jeopardy, Bond, etc., both orally and often by formal written response. I was assigned as District Attorney General Pro-Tem in a nearly six-year-old Sullivan County Murder Case and successfully prosecuted that case. I have successfully handled several other District Attorney General Pro-Tem cases involving Drugs, Assault, and Driving Under the Influence in the cities of Kingsport, Bristol, and Erwin.

As a prosecutor, I have worked on numerous search warrants for narcotics, evidence in murder cases, stolen property, etc. These search warrants have been for the Tennessee Bureau of Investigation as well as the local Sheriffs' and Police Departments. I also assisted other counties within the Judicial District with search warrants when needed. These search warrants have required my work at all hours of the night both at the District Attorney's Office and at the Sheriff's Department. I made myself available to law enforcement day or night to answer questions on numerous cases and to assist in drafting search warrants. I also assisted in the drafting of judicial subpoenas for various documents including white-collar crime prosecution.

I served on the committee of the Hawkins County Recovery Court Program and helped represent the interest of the State in determining which defendants deserved an opportunity for intensive probation rather than incarceration. I also served as a member of the Hawkins County Child Protective Investigative Team and worked with other members of the team in building prosecutable cases against individuals who harmed children. In addition, I worked with the Department of Children's Services in many cases to ensure that individuals who committed crimes against children were prosecuted.

I successfully fought to prevent certain violent inmates from being granted parole by the Parole Board. One specific example of fighting against parole was in the case of a defendant convicted of Attempted First-Degree Murder in which the defendant had attempted to sexually assault one of his minor daughters before trying to suffocate her to death. An older sister heard the commotion and came to try and intervene. Then the defendant fired a firearm in her direction attempting to kill her too. He was convicted of Attempted First-Degree Murder and Sexual Battery for his actions in this case. The inmate unfortunately came up for early parole after serving approximately only two years of a twenty-year sentence. I contacted the Legislature, the Governor's Office, and Commissioner of

the Parole Board, and wrote a letter in opposition to early parole in an attempt to have the parole of this defendant denied. The parole board denied the early parole for this violent and dangerous offender.

I conducted a deposition in the Theft of monies from an elderly woman where the victim was too ill and elderly to be brought from the nursing home to the court to testify. I have also been deposed myself in a Federal lawsuit involving a case which I prosecuted. We ultimately prevailed and the lawsuit against the Rogersville Police Department was dismissed on a motion for summary judgment.

I testified in Criminal Court as a State's witness during the criminal prosecution of a former Sheriff's Deputy. I have met with Federal prosecutors to work jointly on cases within the Judicial District ranging from illegal narcotics sales to prescription medication diversion. On one occasion, I was requested to be a witness for the U.S. Attorney's Office in a sentencing hearing, and the defendant received twenty-five years to serve for narcotics trafficking.

In my prosecutorial career, I often work long hours to make sure that the cases were prepared and prosecuted correctly. Many times this necessitated working until as late as 10:30 or 11:00 at night to ensure that all discovery had been copied, that indictments had been written, that motions had been drafted, and that necessary trial preparation had been completed. I have traveled all over East Tennessee to meet with various witnesses including several medical doctors in preparation for criminal jury trials. Whenever necessary, I worked after hours to visit inmate witnesses as well as other witnesses. I also dedicated extra time with child victims to ensure that they were comfortable with the court system and have on many occasions accompanied the family to the courtroom to demonstrate the operation of the trial and the roles of the judge, jury, and court security to help put them at ease as much as possible.

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

After several days of a Criminal jury trial, I successfully convinced the jury to sentence a defendant to Life Without the Possibility of Parole for a gang-related sniper-type shooting at our local area Wal-Mart.

I successfully prosecuted a Class B felony Theft case involving the use of a power of attorney to misuse an elderly gentleman's money to go to the casino in Cherokee, NC, and gamble the money away. What makes this case somewhat unique is that the case was not my case, and another prosecuting attorney was convinced that it was not prosecutable and should be treated as a civil case. I took over the case and ultimately obtained a conviction for Class B felony Theft with jail time for the defendant.

Another case of note involved the failure to pay for logs after being cut from a lady's land pursuant to a contract. This case also was initially categorized as being civil, and I in conjunction with law enforcement worked on the case and ultimately successfully prosecuted the case obtaining a conviction and the victim's money back up front.

I appealed the decision of the then Hawkins County General Sessions Court Judge who illegally sentenced several defendants to probation when they had not served the mandatory minimum jail sentence required by the statute for Driving Under the Influence. On appeal, the illegal sentences

were modified to require service of the appropriate jail time. Although my decision to appeal was not particularly well received by the original sentencing court, I knew this appeal was necessary in order to uphold the law.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

I have presided over many cases but will list these three as examples for this application.

The first is State v. Darries Jackson, No. E2022-00298-CCA-R3-CD. I presided over this First-Degree Murder jury trial that was 7 years old at the time that I was assigned the case, and it had been through 6 successive defense attorneys. I was assigned to the case on January 19, 2022, and began the trial on February 7, 2022, and concluded the trial on February 10, 2022. Mr. Jackson elected to proceed as a self-represented litigant and filed numerous handwritten motions both before and after I was assigned the case. Mr. Jackson raised various legal theories and defenses that required the Court to address them and at one point looked at the jury and said, "There will never be another one like this one," in his charismatic style. Mr. Jackson was convicted as charged and his conviction was affirmed on appeal.

The second is State v. Rikiya Parks, No. E2024-01911-CCA-R3-CD. I presided over this aggravated child abuse jury trial in 2024 involving the starvation of a minor to such a degree that the treating doctor observed refeeding syndrome, a syndrome that was discovered in treating holocaust survivors. The refeeding syndrome required medical professionals to treat the victim to keep the reintroduction of food from killing her. The Court also had to deal with Facebook messages that were purported to be from the minor to the defendant allegedly being sent while law enforcement were actively on scene trying to find the minor as well as other legal issues during the case. The defendant was convicted and the conviction was affirmed on appeal.

I also have had cases go to the Tennessee Supreme Court, one of which is State v. Anthony Miller, 575 S.W.3d 807 (Tenn. 2019). This case clarified the law concerning whether search warrants required the approval of the District Attorney General's Office prior to being applied for and executed in cases involving sexual exploitation of a minor. The Supreme Court affirmed my decision that the search warrant was not invalid allowing the evidence to be used against the defendant. This case cleared up a split of authority out of the Court of Criminal Appeals concerning this issue.

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 have not served as a fiduciary other than currently being the power of attorney for my father.

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

I spent two summers as a clerk for the Law Office of Douglas T. Jenkins in Rogersville, Tennessee, during which time I worked on deeds, drafted memos, a Section 1983 Civil Rights suit, and other legal research for Mr. Jenkins.

During my last year of law school at the University of Tennessee, I had the honor of being selected to participate in a prosecutorial externship with the Knoxville District Attorney's Office. I was assigned as a special prosecutor in the Criminal Court Division III and worked on several cases. I successfully argued against defense counsel Phil Lomonaco that the Tennessee Drug Tax, as it existed at the time, would not prevent the State from being able to prosecute a defendant based on a double jeopardy challenge.

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

I submitted an application for Circuit Court Judge, Part 3.

The Judicial Nominating Commission met at the General Morgan Inn in Greeneville, Tennessee, on Thursday, April 11, 2013. I came within 1 vote of being submitted to the Governor. I subsequently ran for Circuit Court Judge, Part 1, and was elected in 2014.

### 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.

**1. University of Tennessee College of Law (2003-2006)**

Juris Doctor, May 2006

Grade Point Average: 3.31/4.0

Activities: Prosecutorial Externship; Christian Legal Society; Criminal Law Society; Federalist Society; International Law Society

Honors: Dean's Citation; Dean's List; Kingsport Bar Association Scholarship; Certificate of Academic Excellence - Constitutional Law; Certificate of Academic Excellence - Wealth Transfer Tax

**2. East Tennessee State University (2001-2003)**

Bachelor of Business Administration, May 2003, *magna cum laude*

Major: Operations Management; Minor: Accounting

Grade Point Average: 3.83/4.0

I took and passed several CLEP, DANTES, and other exams totaling 34 hours of college credit enabling me to graduate in two years.

Activities: Young Republican's Organization; Baptist Student's Union; Volunteer for Habitat for Humanity; National Rifle Association

Honors: Outstanding Management Student of the Year; Dean's List; Phi Kappa Phi Honor Society; Golden Key National Honour Society; Gamma Beta Phi Honor Society; Beta Gamma Sigma Business Honor Society, Academic Performance Scholarship

**3. Walters State Community College (2000-2001)**

I began taking dual enrollment courses while a senior in high school and obtained 13 hours of college credit before graduating high school. I took a summer course obtaining another 3 hours of credit before transferring full time to East Tennessee State University to obtain a Bachelor degree..

**PERSONAL INFORMATION**

15. State your age and date of birth.

I am 42 years old. My birthdate is [REDACTED] 1983.

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

I have lived in the State of Tennessee my entire life of 42 years.

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

I have lived in Hawkins County my entire life except for two years while attending East Tennessee University and three years while attending the University of Tennessee College of

Law. I have lived continuously in Hawkins County for over 19 years since returning from law school.

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

I am registered to vote in Hawkins 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.

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.

I have never been charged with or convicted of any criminal offense.

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.

I am not currently under investigation by any agency whether federal or state.

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.

The only formal complaint that I have received that required a response was submitted by a convicted serial killer named Sean Patrick Goble to the Board of Judiciary alleging that I had systematically conspired to deprive him of his Constitutional right to notice of orders all the way back to 1998, thereby preventing him from being able to appeal decisions against him. This complaint was dismissed by the Board of Judiciary as wholly unfounded, and in fact, most of the allegations occurred years before I was on the bench including as far back as when I was in high school. I was not involved in Mr. Goble's conviction as a lawyer or judge, and his allegations against me were wholly false.

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.

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

I have never filed any type of bankruptcy.

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.

On December 23, 2008, in case number 08C02110, I filed a lawsuit in the Hawkins County General Sessions Court against Delta Airlines for denying my wife boarding on our honeymoon. I purchased the tickets for our honeymoon online and bought one ticket in my name and one in her married name; however, we were unable to register our marriage certificate because we were married on the eve of a holiday and the courthouse was closed. We also could not get a government identification card with her married name on it because those agencies were closed too. After being told that the matter could be cleared up by having the travel agent change her name on the ticket, I had to spend 3 hours on the phone with various people trying to convince Delta to let her board only to finally be told, "Sir, you can board but she cannot." I found this whole ordeal to be extremely unfair to us, and that resulted in a civil lawsuit against the airline. The airline settled with us before going to trial, and the case was concluded on June 23, 2009.

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 am a member of the Masonic Lodge, Overton #5, in Rogersville, Tennessee. I am a Master Mason as well as thirty-second-degree Scottish Rite Mason. I have held several positions within the Masonic Lodge including Junior Steward (2008), Junior Deacon (2009), Senior Deacon (2010), and Junior Warden (2011).

I am a member of Hickory Cove Baptist Church but am currently attending Rogersville First Church.

I am a patron life member of the National Rifle Association.

I am a life member of Phi Kappa Phi Honor Society; Golden Key National Honour Society; Gamma Beta Phi Honor Society; and the Beta Gamma Sigma Business Honor Society.

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.

- a. I am a member of the Masonic Lodge, which is a religious-based male fraternity.
- b. The purpose of the Masonic Lodge is not to discriminate against anyone but rather to provide a certain camaraderie among religiously oriented men. The Order of the Eastern Star is a female affiliate organization and provides females with the same or similar opportunities. I do not support discrimination.

### ACHIEVEMENTS

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

**Tennessee Judicial Conference** (2014-present)

Pattern Jury Instruction Committee—Civil

Member of the Executive Committee (2025-present)

**Tennessee Trial Judges Association** (2014-present)

Parliamentarian for two years 2021-2023

**Hawkins County Bar Association** (2006-present)

**Hamblen County Bar Association**

**Greene County Bar Association**

As a judge in the Third Judicial District, I am associated with the Hamblen County Bar Association and the Greene 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.

I have received a formal letter from District Attorney General Barry Staibus complimenting me on my handling of several Pro-Tem cases including a murder case. I have received many compliments and thank yous from numerous victims, their families, and other concerned parties in murder cases, child sexual abuse cases, and many other types of criminal cases.

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

I have not published any legal articles or books. I did submit my article "Tennessee Drug Tax and Double Jeopardy" for publication; however, during the review process, the state of the law changed and publication was never finalized.

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 was a presenter for a CLE seminar on the subject of "Ain't Behavin'" in Knoxville, TN, that was also recorded and made available for attorneys to obtain CLE credit. I have also been a panelist at our local Chancery Court CLE seminar that allowed local attorneys to obtain CLE credit.

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 to be Circuit Judge, Part 3, in 2013, and I was elected Circuit Court Judge, Part 1, for the Third Judicial District in 2014.

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

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 4 examples of my legal writing. All four are exclusively my work.

#### ESSAYS/PERSONAL STATEMENTS

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

I truly enjoy being a Circuit Court Judge for the Third Judicial District and would be happy to continue to do so for the rest of my career. With that said, I believe my experience as both a

prosecutor and trial judge provides me with the necessary experience and insight to be a successful member of the Court of Criminal Appeals. I believe that my experiences and skill set would be well-suited to being a member of the Court of Criminal Appeals, and I would be honored to serve my community in that position. Lastly, I have been encouraged to apply for the position by colleagues and other stakeholders in the community and am truly humbled by their support and encouragement.

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)*

During my career as a Circuit Judge, I have actively worked to ensure equal justice under the law handling numerous cases both criminal and civil involving self-represented litigants. I presided over a first-degree murder case with an individual representing himself. During my eight years as a prosecutor, I represented the interest of the people at large. I have been prohibited from doing pro bono legal services due to my employment as a prosecutor and judge.

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

I seek a judgeship on the Court of Criminal Appeals, Eastern Division. There are twelve judges on the court, four from each grand division of the state. The court hears appeals as of right from trial courts exercising criminal jurisdiction. These appeals could result from jury trials, bench trials, and other orders or decisions. The Court may be called upon occasionally to hear interlocutory appeals. My experience, professionalism, and dedication to the rule of law would allow me to contribute to the Court's work.

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 am currently active in Rogersville First Church. I have assisted in vacation bible school for the past 12 plus years. My wife has served as the director of the bible school program for most of those 12 years. I have helped with decorations, classes, supervised participants during meal time, worked in the nursery on many occasions, operated the slide show and sound board, and filled in wherever else needed. I have also assisted in building Habitat for Humanity houses in the past and would enjoy doing so again when time allows.

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 grew up in rural East Tennessee. I have worked on machinery, raised cattle, or ran a small hay operation most of my life. I believe experiences like these teach a man something that simply cannot be read about in a book.

My father did not just talk about doing the right thing: he lived it even when it was not the easy thing to do. I try my best to live that same way.

During my time as a prosecutor, I was confronted by many obstacles including seven co-worker changes along with my former training supervisor being charged with and convicted of official misconduct after I reported a complaint against him made by a female defendant. Furthermore, I found myself in the position of asking a judge to recuse himself prior to him ultimately being charged with and convicted of criminal activity. Along the same lines, a former narcotics officer was charged with and convicted of numerous counts of evidence tampering which culminated in me testifying on behalf of the State in his sentencing hearing and subsequently dealing with the many cases affected by his theft of narcotics. I knew that these decisions would have far-reaching repercussions but knew the right thing must be done no matter what personal or professional obstacles would ensue. All of these obstacles created many difficulties that resulted in long hours and loads of legal research in order to be able to successfully prosecute the cases assigned to me.

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)*

I believe in the rule of law and the separation of powers. I will follow the law even if I do not particularly agree with it. I do not support using the judiciary as an end around the legislative process. I presided over a jury trial in which a gentleman had a firearm in the glove box when pulled over for running a stop sign. The individual was very cooperative and even opened the door allowing the officer to search the vehicle when the officer could not get the door to open. The individual was a convicted felon with sufficient convictions to render him a multiple offender. I felt the gentleman had matured since his youthful illegal activities, but I sentenced him according to the law even though I did not feel like the sentence fit particularly well with the facts of the case.

The law is designed to provide and protect certain rights to prevent government overreaching and to establish rules that the government, businesses, and individuals must follow, and while it may not always seem that a statute or rule is particularly appropriate in a given situation, it is imperative that a Judge follow the law. It is generally not the function of the Judiciary to disagree with the substance of the law but to apply the law fairly and impartially to all that come before the court. The legislature is by its function the proper venue to change the current state of the law.

**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.

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|--|------------|
| A. Hon. Douglas T. Jenkins, Chancellor, 3 <sup>rd</sup> Judicial District,                       | [REDACTED] |
| B. Hon. William E. Phillips, II, Circuit Court Judge, Part 2, 3 <sup>rd</sup> Judicial District, | [REDACTED] |
| C. Hon. John E. Dugger, Jr., Criminal Court Judge, 3 <sup>rd</sup> Judicial District,            | [REDACTED] |
| D. David W. Purkey, TN Commissioner of Safety & Homeland Security (Retired.),                    | [REDACTED] |
| E. C. Michael Parrott, Senior Vice President Raymond James,                                      | [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: February 13, 2026.

  
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Signature

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

Example 1

IN THE CRIMINAL COURT FOR GREENE COUNTY, TENNESSEE

State of Tennessee

vs.

Case No.: 01 CR 39

Karen R. Howell

Order

This matter came before the Court to be considered on December 11, 2023, upon petition to re-open post conviction relief filed by Ms. Karen R. Howell. The Court reviewed the petition in its entirety as well as the cases cited by the Petitioner, the response filed by the State of Tennessee, the transcript of the guilty plea and sentencing hearing, the Court files, and listened to oral argument. The Court makes the following findings:

1. The Court finds that the Petitioner's original guilty plea and sentencing hearing complies with all the requirements of Montgomery v. Louisiana, 136 S.Ct. 718 (2016), Miller v. Alabama, 132 S.Ct. (2012), and State v. Booker, 656 S.W.3d 49 (Tenn. 2022). This case has an extensive record not only at the trial level but on the appellate level as well. See State v. Howell, 34 S.W.3d 484 (Tenn. Crim. App. 2000). This extensive record establishes in detail all of the evidence and sentencing considerations that the Judge James Eddie Beckner applied when he sentenced the petitioner. The combined guilty plea and sentencing hearings took an entire week to conduct. While it is true that terms such as "Transient Immaturity" were not directly mentioned by Judge Beckner during the sentencing hearing, the requirements of Montgomery and Miller are more fundamental than just some "Magic Words" but go to the heart of the evidence and sentencing factors actually considered by the trial court. The record is abundantly clear that Judge Beckner took into consideration the petitioner's youth and the attendant circumstances associated with youth when he sentenced her. The transcript of the sentencing hearing makes it clear that not only did Judge Beckner consider her youth but also considered her mental evaluation and IQ, her risk to reoffend, the horrendous nature and circumstances of the crime during which three people were brutally murdered and another, a small child, was shot and left for dead in the mud. The Petitioner testified during

the sentencing hearing and the Court considered in detail the facts she had related about her childhood.

“Karen Howell was born on September 25, 1979. She has no prior record as a juvenile and has been incarcerated for these crimes since she was 17 years of age. She has never been employed. She dropped out of school at the age of 16 after starting as a freshman at three different high schools.

Born in Delaware, Ohio, Howell and her family moved to Kentucky when she was three years old. She has one brother who is eight years her senior. Her parents divorced when she was nine. Howell explained that the marriage dissolved because her mother was a Christian and her father was not. Her early childhood was characterized by severe and violent fights between her parents.

Howell claimed that she had been sexually abused between the ages of five and ten by her paternal uncle and a cousin. She described herself as fearful of relationships. By the age of 13, she began the practice of self-mutilation. Howell reported that she had attempted suicide four times, twice by cutting her wrists and twice by overdosing on drugs.

Until the age of 14, Howell lived with her mother. The two fought often. Howell has a history of resistance to rules and regulations, inability to function in school, illegal drug usage, runaway behavior, and an interest in witchcraft, which began by her use of a Ouija Board and “automatic writing.” Her mother found some of the automatic writings and provided them to ministers who attempted to “cast out demons.” Howell claimed that she has created love spells to get two boys to date her. She believes that she hears voices.

After Howell's first semester of high school, she moved in with her father. She said that her father rarely communicated with her. Although Howell moved back into the home of her mother after only four or five months, she does not characterize her stay with her father in negative terms.

Howell had trouble in school because she simply could not perform the required work. She quit school and attempted to obtain her GED. She moved back to her father's residence and began to babysit for her brother and sister-in-law for as many as ten hours each day. Her sister-in-law helped her study for the GED.

By the age of 15, Howell was sexually active. She started experimenting with illegal drugs at age 15, using alcohol, marijuana, hashish, “shake,” LSD, PCP, and cocaine. She had

used LSD on 14 occasions, causing her to hallucinate. She spoke of two “bad trips”: Once she tried to chew her friend's arm and the second time she sat alone on the floor of the bathroom for hours.

Howell became involved with Natasha Cornett and Joseph Risner in school. She and Cornett shared an interest in witchcraft and they both claim to hear voices. Howell, who says that she started hearing voices at age 13, also claims to have visual hallucinations of snakes, spirits, and demons. Howell and Risner were dating at the time of the shootings.

In January of 1998, Leonard Martin Miller, a clinical psychologist, conducted three interviews with Howell. In those meetings, Howell explained that she injures herself in order to get rid of emotional pain. She showed her scars to Dr. Miller and informed him that the last time she hurt herself was in April, 1997, just before the Lillelid shootings. Howell claimed that spirits pushed into her thoughts and caused her to strike out at herself. While conceding that she is “an emotional mess [and that] nothing could make [her] happy,” she stated that she did not strike out at others.

Howell explained to Dr. Miller that she had severe mood swings which included episodes of extreme depression, uncontrollable crying, and suicidal urges. She stated that she also experienced manic phases, when she laughed uncontrollably. According to Howell, her mother had been diagnosed with a bipolar disorder and her behavior followed a similar pattern of depression and hyperactivity and rage. Howell's maternal grandmother and grandfather were also diagnosed with bipolar disorders.

Howell informed the psychologist that she experienced hallucinations and had participated in seances with Cornett. Howell claimed to be the medium in the seances and that spirits entered her body, causing her to become sad and depressed.” See State v. Howell, 34 S.W.3d 484.

This is just a sampling of the information about her childhood background and the circumstances of her juvenile life presented to the trial court as required in Miller and Montgomery. The record in this case is so extensive and properly documented that including additional details about the heinous nature of these crimes or the other sentencing considerations applied by Judge Beckner is not necessary particularly given the fact that the Court is ordering the complete plea and sentencing hearing be made an exhibit to this hearing. It is the opinion of the Court that this case clearly fits within the range of cases that

the Miller and Montgomery court had in mind where it is appropriate to sentence a juvenile defendant to life without parole and that all the necessary considerations applicable to sentencing juveniles to such a sentence were properly analyzed.

2. The Petitioner's attorneys argue that Booker requires this Court to order an individualized parole hearing for Ms. Howell because the least sentence available to Ms. Howell under Tennessee Law was life with the possibility of parole requiring the service of at least 51 years before parole eligibility, which the Tennessee Supreme Court found unconstitutional as applied to the juvenile defendant in Booker. This Court announced its ruling in open Court on December 11, 2023, and incorporates a copy of the same into this order. The Court finds Booker to be distinguishable from the case at hand because in Booker the trial Court sentenced the defendant to life with the possibility of parole which was the least sentence available for the trial judge to approve; however, Judge Beckner after conducting a full and comprehensive sentencing hearing, taking into consideration Ms. Howell's youth and all the factors discussed in paragraph one above, sentenced Ms. Howell to consecutive life without the possibility of parole sentences; therefore, Ms. Howell's circumstances are significantly different from those the Tennessee Supreme Court addressed in Booker. The Tennessee Supreme Court nor the United States Supreme Court have ever held that a Juvenile cannot be sentence to life without the possibility of parole if the facts and evidence warrant such a sentence. This Court can easily see that such a sentence should be imposed only in rare circumstances pursuant to the Miller, Montgomery, and Booker holdings; however, this case presents the Court with one of those rare circumstances that justifies the harshest of sentences available. In fact, the State was seeking the death penalty against the adult co-defendants before all the defendants entered guilty pleas. It is very fortunate for society in general that we do not have many cases where the facts warrant consecutive life without the possibility of parole sentences for a juvenile offender. This Court finds that the original trial judge conducted a full sentencing hearing taking into consideration all the appropriate factors under the holdings of Miller, Montgomery, and Booker; thus, the holding of Booker does not present Ms. Howell with an avenue of relief from her consecutive life sentences.

Considering the petition and all cited authority before the Court and the record as a whole, the Court finds that there is no basis to grant Ms. Howell any form of relief; thus, her petition to re-open her post-conviction petition is denied.

ENTER this the 10 day of January, 2024.

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Alex E. Pearson, Circuit Judge

Example 2.

## **Tennessee Drug Tax and Double Jeopardy**

Alex Pearson\*

The Fifth Amendment of United States Constitution and Article One Section Ten of the Tennessee Constitution prevent multiple criminal punishments for the same offense, which is known as double jeopardy.<sup>1</sup> Tennessee Code Annotated § 67-4-2801 et. seq. (“Tennessee Drug Tax”) is over a year old now, and it is very similar to the most recent North Carolina drug tax. The United States Supreme Court and other federal and state courts have addressed double jeopardy issues concerning similar drug taxes.<sup>2</sup> The Tennessee Drug Tax raises an interesting double jeopardy issue that has yet to be addressed by any Tennessee appellate court. The issue centers on whether the Tennessee Drug Tax is to be construed as a civil tax or criminal penalty. The United States Court of Appeals for the Sixth Circuit has addressed a similar double jeopardy issue relating to wagering.<sup>3</sup> The remainder of this article will set out the test being used by federal and other state jurisdictions, the probable outcome of a double jeopardy challenge using this test, and will distinguish the leading United States Supreme Court case.

### **Facts Leading to a Double Jeopardy Challenge**

An individual is arrested with the requisite amount of illegal drugs as defined by the Tennessee Drug Tax.<sup>4</sup> As a result of the arrest, the individual is charged with: (1) unlawful and knowing possession of a controlled substance with intent to sell, and (2) unlawful and knowing

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1 U.S. Const. amend. V; Tenn. Const. art. 1, § 10 (2005).

2 Department of Revenue of Montana v. Kurth Ranch, 511 U.S. 767 (1994); Simpson v. Bouker, 249 F.3d 1204 (10th Cir. 2001); Padavich v. Thalaker, 162 F.3d 521 (8th Cir. 1998); Hough v. Mozingo, 2005 WL 1168462 (M.D.N.C., 2005); State v. Gullede, 896 P.2d 378 (1995); Milner v. State, 658 So.2d 500 (Ala. Civ. App. 1994).

3 United States v. Beaty, 147 F.3d 522 (6th Cir. 1998).

4 Tenn. Code Ann. § 67-4-2801 et. seq.

possession of a controlled substance with intent to deliver.<sup>5</sup>

Subsequent to the arrest but before trial, the Defendant is sent a Notice of Assessment and Demand for Payment from the Tennessee Department of Revenue, pursuant to the Tennessee Drug Tax. The Defendant either pays or fails to pay the demanded sum. The Department of Revenue may file a notice of state tax lien on the Defendant's assets in the event of nonpayment.

### **Double Jeopardy Argument**

In the criminal case, the Defendant's argument will be that he or she has already been criminally punished through the Tennessee Drug Tax and cannot now be prosecuted a second time under the Tennessee Criminal Code.<sup>6</sup> To prevail, the Defendant must establish that the Tennessee Drug Tax is "so punitive in form and effect as to render [it] criminal despite [the legislature's] intent to the contrary."<sup>7</sup> To prevail, the State must convince the court that the Tennessee Drug Tax is civil in nature and thus does not implicate double jeopardy concerns.

### **Legal Framework**

The Tennessee Drug Tax's language provides that it is a civil revenue generation tax.<sup>8</sup> In Hudson v. United States the United States Supreme Court provided "... only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty."<sup>9</sup>

### **Analysis Determining Whether the Statute is Civil**

The seminal factors determining whether a statute denominated as civil is so punitive as to be transformed into a criminal penalty were detailed in Kennedy v. Mendoza-Martinez and

<sup>5</sup> Both counts are a violation of Tenn. Code Ann. § 39-17-417.

<sup>6</sup> Tenn. Code Ann. § 67-4-2801 et. seq.

<sup>7</sup> Beatty, 147 F.3d at 525 (quoting United States v. Ursery, 518 U.S. 267 (1996)).

<sup>8</sup> Tenn. Code Ann. § 67-4-2801.

<sup>9</sup> Hudson v. United States, 522 U.S. 93 (1997) (emphasis added) (holding a criminal indictment following the Office of the Comptroller of the Currency's monetary penalties and occupational debarment did not violate double jeopardy under the Fifth Amendment).

reaffirmed in Hudson.<sup>10</sup> The factors are as follows:

(1) [w]hether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment-retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; (7) whether it appears excessive in relation to the alternative purposes assigned.<sup>11</sup>

These seven factors have been used by other jurisdictions when faced with double jeopardy issues centered on the nature of a tax. As in Beatty, a wagering case, when these seven factors are applied to the Tennessee Drug Tax, there is “... little evidence, let alone the requisite clearest proof, that the taxes are ‘so punitive in form and effect as to render them criminal despite [the legislature’s] intent to the Contrary.’”<sup>12</sup>

First, paying the Tennessee Drug Tax is not an affirmative disability or restraint, such as imprisonment. “The imposition of taxes is ‘certainly nothing approaching the ‘infamous punishment’ of imprisonment.’”<sup>13</sup>

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<sup>10</sup> Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963); see Hudson, 522 U.S. at 99.

<sup>11</sup> Kennedy, 372 U.S. at 168-69; see also Hudson, 522 U.S. at 99-100; Department of Revenue of Montana v. Kurth Ranch, 511 U.S. 767 (1994); United States v. Beatty, 147 F.3d 522 (6th Cir. 1998); Dye v. Frank, 355 F.3d 1102 (7th Cir. 2004); Hough v. Mozingo, 2005 WL 1168462 (M.D.N.C., 2005).

<sup>12</sup> Beatty, 147 F.3d at 525 (quoting United States v. Ursery, 518 U.S. 267 (1996)).

<sup>13</sup> Id. (quoting Flemming v. Nestor, 363 U.S. 603 (1960)).

Second, taxes are historically viewed as civil in nature not criminal.<sup>14</sup>

Third, the Tennessee Drug Tax is a strict liability offense and thus does not require a finding of scienter. It is the act of possessing the requisite amount of drugs that requires payment of the Tennessee Drug Tax and not a finding of scienter.

Fourth, the Tennessee Drug Tax does serve the traditional aim of deterrence; however, a monetary sanction does not become a criminal punishment merely because it deters others from such actions.<sup>15</sup>

Fifth, the act of dealing in drugs is already a crime; therefore, the Tennessee Drug Tax applies to behavior that is already criminal. However, the fact the Tennessee Drug Tax is assessed on conduct already criminal is insufficient to convert the tax into a criminal punishment.<sup>16</sup> Furthermore, any penalties for late payment are assessed based on the failure to pay the Drug Tax and not the illegal drug possession.

Sixth, the Tennessee Drug Tax has the alternative purpose of raising revenue as evidenced by the \$1.73 million raised by the tax in its first year.<sup>17</sup>

Lastly, the tax and penalties are not excessive with respect to the alternative purpose of raising revenue for the state of Tennessee, in light of the fifty dollars (\$50) per gram tax on cocaine and an approximate street value of one hundred dollars (\$100) per gram.<sup>18</sup>

While the Sixth Circuit Court of Appeals has not addressed a drug tax double jeopardy issue, the Sixth Circuit has addressed a double jeopardy issue arising from a tax on wagering in United

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<sup>14</sup> Id. (referencing Kurth Ranch, 511 U.S. at 779 (“Whereas fines, penalties, and forfeitures are readily characterized as sanctions, taxes are typically different because they are usually motivated by revenue-raising, rather than punitive, purposes.”); Mozingo, 2005 WL 1168462.

<sup>15</sup> see Hudson, 522 U.S. at 105

<sup>16</sup> Id.

<sup>17</sup> *Taxes on illegal drugs, moonshine net \$1.7M*, Knoxville News Sentinel, January 24, 2006 (interviewing Tennessee Department of Revenue Commissioner Loren L. Chumley).

<sup>18</sup> Tenn. Code Ann. § 67-4-2803(a)3.

States v. Beaty.<sup>19</sup> Beaty made a double jeopardy argument centered on the Kennedy factors, and the court found the tax was not criminal in nature.<sup>20</sup> Beaty had paid the required wagering taxes and was subsequently charged with illegal gambling. Beaty argued that he had already been criminally punished by the annual wagering tax. The court applied the seven factor Kennedy test and distinguished Kurth Ranch.<sup>21</sup> The Beaty court held that the defendant could be charged with illegal wagering even though he had previously been required to pay a tax on the same wagering.<sup>22</sup>

### **Analysis Distinguishing Kurth Ranch**

The Defendant will contend that the Tennessee Drug Tax is criminal in nature. In Kurth Ranch, the U.S. Supreme court ruled a Montana Drug Tax statute was criminal in nature. However, there are three major differences between the Tennessee Drug Tax and the Montana Drug Tax considered in Kurth Ranch. The United States Court of Appeals for the Tenth Circuit and the United States Court of Appeals for the Eighth Circuit found these three differences to be dispositive.<sup>23</sup> First, the Tennessee Drug tax must be paid upon actual or constructive possession of the statutorily provided amount of controlled substance unlike the Montana Drug Tax in Kurth Ranch, which was only assessed upon arrest. Second, the Tennessee Drug Tax is due upon actual or constructive possession; therefore, the Tennessee Drug Tax is not assessed ““on goods that the taxpayer neither owns nor possesses when the tax is imposed.””<sup>24</sup> Third, the Tennessee Drug Tax is not an excessively high tax when compared to the market value of the drugs, unlike the tax in Kurth Ranch.

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<sup>19</sup> Beaty, 147 F.3d 522 (6th Cir. 1998).

<sup>20</sup> Id. at 525-26.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> see Simpson v. Bouker, 249 F.3d 1204 (10th Cir. 2001); Padavich v. Thalaker, 162 F.3d 521 (8th Cir. 1998).

<sup>24</sup> Bouker, 249 F.3d 1204 (distinguishing Kurth Ranch, 511 U.S. at 781-82).

First, the Tennessee Drug Tax is due upon actual or constructive possession and not solely upon arrest as was the case under the Montana Drug Tax in Kurth Ranch. The Tennessee Drug Tax is like the Kansas and Iowa Drug Taxes that were held not to violate double jeopardy in Bouker and Thalaker.<sup>25</sup> The Bouker and Thalaker courts found the concerns in Kurth Ranch were not present in the Kansas and Iowa Drug Taxes because the Kansas and Iowa taxes were due upon possession and not solely upon arrest, which demonstrates the revenue generating purpose.<sup>26</sup> Importantly, under the Tennessee, Kansas and Iowa Drug Taxes, the class of taxpayers is not limited to alleged criminals, i.e. persons arrested for possessing a listed drug, as was the case in Kurth Ranch, because possession not arrest creates the tax liability.<sup>27</sup> Moreover, the Tennessee Drug Tax "... is not conditioned upon the commission of a crime" because an individual can possess illegal drugs below the requisite amount provided by statute without being liable for the Drug Tax and can avoid penalties by timely paying.<sup>28</sup>

Second, the Tennessee Drug Tax is payable within forty eight hours of actual or constructive possession; therefore, the tax is due prior to arrest and destruction of the drugs, which is unlike the Montana law in Kurth Ranch.<sup>29</sup> The Tennessee Drug Tax like the Kansas and Alabama Taxes, which were held not to violate double jeopardy, is imposed upon possession of the listed drug; therefore, the Tennessee statute is distinguishable from the Montana statute where the tax was imposed on goods that had presumably been destroyed and which the taxpayer did not own or possess at the time of the assessment.<sup>30</sup>

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<sup>25</sup> Simpson v. Bouker, 249 F.3d 1204 (10th Cir 2001); Padavich v. Thalaker, 162 F.3d 521 (8th Cir. 1998).

<sup>26</sup> Bouker, 249 F.3d at 1210-12; Thalaker, 162 F.3d at 521-23.

<sup>27</sup> Bouker, 249 F.3d at 1210, 1211; Thalaker, 162 F.3d at 523 (citing Iowa Code § 453B.3 and § 453B.1); Tenn. Code Ann. § 67-4-2806.

<sup>28</sup> Thalaker, 162 F.3d at 523.

<sup>29</sup> Tenn. Code Ann. § 67-4-2806; Kurth Ranch, 511 U.S. at 783.

<sup>30</sup> see State v. Gulledege, 896 P.2d 378 (1995) (cited in Bouker, 249 F.3d. 1204); Milner v. State, 658 So.2d 500 (Ala. Civ. App. 1994).

Third, the Tennessee Drug Tax is virtually identical to the North Carolina Drug Tax, which was held not to violate double jeopardy in Hough v. Mozingo.<sup>31</sup> The district court in Mozingo found the current North Carolina Drug Tax of fifty dollars (\$50) per gram for cocaine, which is the same as it is in Tennessee, is not an excessively high tax rate compared to the market value of the drugs.<sup>32</sup> In Kurth Ranch and Lynn, the extremely high rate of taxation eight (8) times market value in Kurth Ranch and sixteen (16) times in Lynn greatly influenced the decision that the taxes in those cases were in reality criminal penalties.<sup>33</sup> The statutory tax is fifty dollars (\$50) per gram for cocaine, and cocaine has an approximate street value of one hundred dollars (\$100) per gram in East Tennessee. The price, however, drops as the quantity purchased increases, and the market value of cocaine in East Tennessee is approximately thirty thousand dollars (\$30,000) per kilo. The Tennessee Drug Tax, therefore, ranges between half the market value of the drugs to one and one half times the market value. The Tennessee Drug Tax is certainly well below the eight (8) or sixteen (16) times the market value, which posed a problem in Kurth Ranch and Lynn.<sup>34</sup>

### CONCLUSION

The Tennessee Drug Tax is civil in nature and thus does not implicate double jeopardy considerations. A Defendant can be subject to both the Tennessee Drug Tax and the criminal code without violating double jeopardy principles.

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<sup>31</sup> N.C. STAT. § 105-113.107; Mozingo, 2005 WL 1168462 (M.D.N.C., 2005).

<sup>32</sup> Mozingo, 2005 WL 1168462 (discussing Kurth Ranch, 511 U.S. 767 (1994) and Lynn v. West, 134 F.3d 582 (4th Cir. 1998)).

<sup>33</sup> Id.

<sup>34</sup> Id.

Example 3.

IN THE CRIMINAL COURT FOR HAWKINS COUNTY, TENNESSEE  
SITTING AT ROGERSVILLE

STATE OF TENNESSEE

V

NO: 11 CR 120  
11 CR 119

David Henegar  
Candida Henegar

STATE'S RESPONSE TO MOTION TO SUPPRESS

Comes the State of Tennessee, by and through C. Berkeley Bell, District Attorney General for the Third Judicial District and moves that the Defendant's Motion to Suppress be denied.

First, the Search is constitutionally permissible under State v. Turner, 297 S.W.3d 155 (Tenn. 2009) and State v. Howell, 2008 Tenn. Crim. App. LEXIS 221 holding that a search made pursuant to a probation/parole order consent to search is valid if it contains the proper law enforcement consent language in it. In the case before the Court, the officers had personal knowledge that Mr. Henegar was on probation out of Sullivan County and that as part of his probation order Mr. Henegar had a "law enforcement consent to search" provision in his probation order. Mr. Henegar was on probation in Case No.: S53,129, a conviction from Sullivan County Criminal Court, and the probation began on March 17, 2010, and was to continue to through January 14, 2014. The State would like to point out to the Court section number fifteen of the S53,129 probation order granting consent to law enforcement to search. See attached probation order.

On December 21, 2010, officers were contacted by Detective Marcus Terry of the Kentucky State Police Narcotics Task Force who informed Det. David Benton that a quantity of drugs had been located in Kentucky and that the narcotics had originated from Rogersville, Tennessee, from a man named David. Det. David Benton met with an individual named Jeffery Maggard

who stated he met David in jail in March or April of 2010. Maggard stated during that time he developed a relationship with David and eventually met David at the Rogersville Food City and purchased pills from him. Maggard said that during the next several months he was invited to come to David's house and began going every week to purchase quantities of various pills. Maggard said that during that time frame the most money he had spent on purchasing illegal drugs from David during one transaction was approximately \$12,000. Maggard advised that a low estimate of the number of 30mg oxycodone that he had purchased from David between March 2010 to December 22, 2010, was 2,000 tablets. Maggard also said that he had purchased at least 500 hydrocodone, at least 3,000 xanax, at least 100 percocet, and some marijuana all from David during the above time frame. Mr. Maggard indicated a low estimate of the total amount of money he had spent to purchase these drugs from David to be at least \$20,000. Mr. Maggard had made numerous purchases from the residence of David, and Mr. Maggard described the residence as a light colored, double-wide trailer, across from a blue log-cabin style home and further provided details about what cars were there and that a Jeep Cherokee was for sale at the residence. Mr. Maggard further provided that an older dump-type truck was present at the residence. Mr. Maggard also provided the phone number he had been using to contact David, which was confirmed to be linked to David Henegar. Mr. Maggard provided directions to law enforcement to get to the residence that he had purchased the narcotics from on several occasions. Det. David Benton followed the directions provided by Mr. Maggard and located 292 Hipshire Hollow Rd; Det. Benton was able to independently corroborate the information provided by Mr. Maggard. Furthermore, the officers knew that David Henegar lived at the residence. Mr. Maggard picked out David Henegar from a photo lineup as the individual selling the drugs at the residence. Officers then set up a recorded phone conversation in which a drug

transaction was arranged to purchase oxycodone, and this call was made to David Henegar's phone. See attached affidavit of search warrant. During this monitored phone conversation, the Jeep Cherokee still being for sale was discussed.

Second, the search is also constitutional because even though the officers did not need a search warrant, one was obtained out of an abundance of caution.

#### States Response to Subsection A

The State would submit that with respect to subsection A. of defendant's motion to suppress that the affidavit establishes probable cause to search the residence and sufficiently identifies the place to be searched and the items to be seized. See affidavit and search warrant.

#### States Response to Subsection B

The State would submit that with respect to subsection B. the officers corroborated the informant's reliability sufficiently. See attached search warrant affidavit. The standard for establishing probable cause based on information from a informant was laid out in State v. Jacumin, 778 S.W. 2d 430 (Tenn. 1989), which adopted the two (2) prong Aguilar and Spinelli test laid out in Aguilar v. Texas, 378 U.S. 108 (1964) and Spinelli v. United States, 393 U.S. 410 (1969). Probable cause requires that there be a basis for the informant's knowledge, and the informant must be credible or the information reliable. In Jacumin, the Court further provided the Aguilar-Spinelli test should not be applied hypertechnically. See Jacumin, 778 S.W.2d at 436; see State v. Brown, 898 S.W.2d 749, 752 (Tenn. Crim. App. 1994). Furthermore, "where a tip fails under either or both of the two prongs, probable cause may still be established by independent police investigative work that corroborates the tip to such an extent that it supports the inference that the informant was reliable and that the informant made the charge on the basis of information obtained in a reliable way." See State v. Baugh, 2002 Tenn. Crim. App. Lexis

840 (citing State v. Bridges, 936 S.W.2d 487, 491 (Tenn. 1997). ““ Probable cause need not rest on an informant’s tip alone, but may be supplemented by direct observation by the officers or a combination of the two.”” Id. (citing State v. Shrum, 643 S.W.2d 891, 894 (Tenn. 1982).

#### States Response to Subsection C

The State would submit that with respect to subsection C. that while an error does exist in the directions as to one street label, “a reasonably prudent law enforcement officer could find the defendant's residence immediately and without difficulty by following the description of the premises contained in the search warrant. It must be remembered that the description of the property does not have to adhere to the same minuscule detail which a deed must contain when there is a transfer of real property.” See State v. Vanderford, 980 S.W.2d 390 at 405 (Tenn. Crim. App. 1997). The State would also like to point out that the degree of particularity necessary in the description of a rural residence is not as great as for a house in the city. See State v. Bostic, 898 S.W.2d 242 (Tenn. Crim. App. 1994). In Bostic “[t]he defendant makes much of the discrepancy between the distance to the intersection of Marion Circle stated in the warrant....” Id. The Court in Bostic further observed “the defendant argues that it is entirely feasible that a searching officer would arrive at the first intersection, see the Marion Circle street sign and make the turn at that point even though the odometer was only coming up on four tenths of a mile. It is in this respect that he contends that the warrant is ambiguous and improperly leaves to the searching officer the discretion to search either of two different residences.” Id.

In Bostic the, “the state argue[d] that there was no danger that the wrong house would be searched because the affidavit, which was incorporated in the warrant by reference, stated that the defendant, by name, ‘resides in or occupies or is in possession’ of the place to be searched. The distance stated in the warrant was approximately a mile off the actual distance to the

defendant's home.” Id. However, the Bostic court held that “the description was sufficiently particular because the occupant of the residence was named and the officers could inquire as to the identity of the residence.” Id. The Bostic Court cited “since houses in rural communities are commonly known by the name of the owner rather than by any technical legal description, a description of rural property as the premises occupied by a named person may be held sufficient, even though the property is incorrectly described as to section and range. Likewise the description may be sufficient if the farm is named and the particular district disregarded.” Id. “The rule of particularity is relaxed with regard to rural residences because it is often difficult to describe a rural property with precision and the likelihood of error is somewhat lessened. 2 Wayne R. LaFave, *Search and Seizure*, § 4.5(a), at 209 (2d ed. 1987).” Id.

The case before the Court is like Bostic considering there was a small error in the directions and that the error was cured or offset by the fact the residence is in a rural location and known to be the residence of David Henegar. Mr. Henegar has had previous dealings with law enforcement and his residence was known prior to the search warrant being issued; furthermore, the search warrant lists the property as being David Henegar’s property.

#### States Response to Subsection D

The defendant’s claim that the information is too stale is inaccurate. As detailed in the search warrant affidavit, a drug transaction was arranged on the phone the same day as the search warrant was obtained in which \$6,000 worth of drugs were to be purchased at the defendant’s residence. It is difficult to imagine a situation in which the information would be less stale than in the case before the Court.

### States Response to Subsection F

The defendant's claim that the search warrant must be suppressed based on a rule 41 violation is misplaced. First, the defendant claims that because the Judge's copy is missing the affidavit section or, as the defendant refers to it as, the back of the search warrant, then the warrant is invalid; the Tennessee Supreme Court in State v. Davis has previously held that an exact copy requirement of rule 41 does not require an exact copy of the affidavit be included with all copies of the search warrant. See State v. Davis, 185 S.W.3d 338 (Tenn. 2006) and State v. Lowe, 949 S.W.2d 300 (Tenn. Crim. App. 1996). The Defendant in Davis "contend[ed] that the warrant was invalid because the underlying affidavit was not attached to nor filed with the warrant." The Court held "we disagree". Id. The Davis court said "[w]hile an affidavit must be retained in order to ensure subsequent judicial review of the probable cause determination, there is no statute or rule in Tennessee which requires an affidavit upon which a search warrant is issued to be attached or otherwise kept with the warrant." Id.

The situation presented to the court is no different than that in Davis because the Judge's copy contained the necessary part that being the actual search warrant itself. The side of the Judge's copy that is missing clearly provides that it is the affidavit section and not the search warrant itself. The Court in Davis reminds us that the affidavit is not considered part of the search warrant in this State even if it appears on the same printed form as the warrant. Id. (citing Minton v. State, 186 Tenn. 541, 212 S.W.2d 373 (1948)). The Court further clarified that even if the affidavit is incorporated by reference it was still not required to be attached under rule 41. Furthermore in the case before the Court, the Judge's copy did contain the separate Affidavit Attachment just not the pre-printed section marked affidavit on the back of the search warrant itself.

With respect to the minor discrepancies complained of by the defendant between the search warrants, none are of a sufficient nature to invalidate the search warrant. The State would like to draw the Court's attention to State v. Harvill providing that it is permissible under rule 41 to have multiple copies of the search warrant with the Judge's signature, and the court holds that the three copies do not have to be from one original and ran through a copy machine or other duplication device. State v. Harvill, 1991 Tenn. Crim. App. LEXIS 461. The State would like to point out that any errors in the three copies are mere clerical errors and insufficient to invalidate the search warrant. See State v. Blair, 2009 Tenn. Crim. App. LEXIS 1032. The Court in Blair said "we hold that the trial court properly denied the Defendant's motion to suppress on the basis that the copies and the original warrants contained insignificant variations." Id. The differences pointed out by the defendant Henegar are insignificant and should not result in the Search Warrant being found to be invalid.

In conclusion, the defendant's Motion to Suppress should be denied. There are two separate and distinct constitutionally valid basis to search the property at issue in the case before the Court. First, there is a valid consent to search provision contained in David Henegar's felony drug probation order out of Sullivan County Criminal Court. Second, the officers had a valid search warrant supported by probable cause issued by court of competent jurisdiction.

Respectfully Submitted,

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Office of District Attorney General

Example 4

IN THE CRIMINAL COURT FOR HAMBLLEN COUNTY, TENNESSEE

State of Tennessee

vs.

Case No.: 14 CR 619

Ronald David Ailey

Order

This matter came before the Court to be heard on October 27, 2017, upon motion for new trial filed by Ronald David Ailey. The Court listened to the arguments of counsel, testimony of attorney Jonathan Holcomb, Ronald Ailey, Matthew Ailey, Joseph Whiteside, Sandra Cox, Edward Cox, attorney Gregory Isaacs, as well as reviewed the exhibits, stipulation, and considering the record as a whole makes the following findings.

1. The Court finds that the claims of false statements by prosecution witnesses to be insufficient to constitute a basis for new trial. The Court finds that Joseph Munsey's testimony that he had a clean record to be in response to Mr. Holcomb's incorrect statement that Joseph Munsey had a felony record. The Court finds that Joseph Munsey was not attempting to mislead the jury but was responding to the assertion that he was a convicted felon. The Court hardly finds a conviction for reckless driving or simple possession and drug paraphernalia to be crimes of dishonesty that would impact a witness's character for truthfulness. The Court finds that Tom Munsey was questioned under oath about what he saw and answered accordingly. The Court further finds that the jury heard all the 911 calls and was certainly in a position to evaluate Tom Munsey's credibility and to determine whether or not his story changed.
2. The Court finds insufficient proof to support the claim that Mr. Ailey's attorney Jonathan Holcomb failed to relay an offer from the State. The Court listened to the stipulated testimony of Assistant District Attorney Kimberly Morrison in which she indicated that Mr. Holcomb was advised that one victim would agree to probation on Aggravated

Assault but that she was not in a position to approach the other victim to see if she could make such an offer unless the defendant would be willing to accept it. The Court finds that from the stipulated testimony it is abundantly clear that no offer of probation was ever conveyed to Mr. Holcomb or Mr. Ailey; furthermore, the Court finds that Mr. Ailey had made it clear to Mr. Holcomb that any felony plea offer would have to contain diversion as a component of it. Therefore, the Court cannot find Mr. Holcomb ineffective for failing to relay a nonexistent offer to Mr. Ailey. The Court is of the opinion that Mr. Holcomb could certainly have further attempted to persuade Mr. Ailey to authorize him to make an offer to the State to plead guilty to Aggravated Assault with either straight probation or split confinement but does not find the failure to do so to be ineffective assistance of counsel. Mr. Holcomb testified that he does not pressure clients to take plea offers from the State and leaves it up to them. Mr. Holcomb's testimony made it clear that he attempted to work the case out in General Sessions Court but was unable to do so and thus conducted a preliminary hearing forcing the State to establish probable cause. Mr. Holcomb then continued to discuss the case with Mr. Ailey and his family as evidenced by the text messages introduced in the motion for new trial as exhibit number two as well as the testimony of Mr. Holcomb, Mr. Ronald Ailey, and Matthew Ailey. Mr. Holcomb repeatedly attempted to resolve the case on the terms that Mr. Ailey wanted but was unable to do so and thus went to trial to make the State prove its case. Mr. Ailey was correctly informed by Mr. Holcomb that going to trial did not prevent him from making application for diversion, and in fact, that is exactly what happened in this case. Mr. Ailey applied for diversion after being convicted of 2 counts of Aggravated Assault and said application was denied by this Court. It is clear to the Court from the testimony of Mr. Ailey and Mr. Holcomb that Mr. Holcomb discussed things such as trying to plea to a reduced charge as well as possible ways that Mr. Ailey could obtain a diversion; however, the District Attorney General's Office was unwilling to endorse either such option; thus, Mr. Ailey and his attorney elected to go to trial.

3. The Court is concerned about Mr. Holcomb's failure to interview Joe Whiteside after repeated request of Mr. Ailey; however, Mr. Holcomb testified that Mr. Ailey had informed him of what Mr. Whiteside would testify about and did not believe it would help their case. Fortunately, the Court is not left to wonder about whether such testimony

would be beneficial to Mr. Ailey because the Court heard Mr. Whiteside's testimony in the motion for new trial and is convinced that said testimony would not have impacted Mr. Ailey's case. Mr. Whiteside did not describe Mr. Ailey as being completely calm and instead said that Mr. Ailey appeared agitated; furthermore, Mr. Whiteside testified that when he first looked up after the shots that he could not see Joseph or Lashae Munsey and after a short time saw Joseph walk up from behind a house, which would not have placed Mr. Munsey in a position to be a threat to Mr. Ailey. Moreover and perhaps most importantly, Mr. Ailey told Mr. Holcomb in their first meeting what happened during the altercation, gave a deposition about what happened, and testified about what happened during the underlying jury trial, and based on Mr. Ailey's testimony, it is hard to imagine that any witness would have been able to make a difference in the case because Mr. Ailey acknowledges that Joseph nor Lashae Munsey ever charged him, threatened him, or attempted to do anything to him. Mr. Ailey further testified that he fired the shots after ordering Mr. Munsey to "show me your hands" and that Mr. Munsey did not comply. Mr. Ailey testified that he felt like he had the authority to make such a demand of Mr. Munsey even though this incident occurred some distance removed from the Ailey property on land owned by relatives of the Munseys and a public roadway. The Court finds that Mr. Holcomb's failure to interview Mr. Whiteside, while concerning, does not constitute ineffective assistance of counsel given the information provided to him by his client and the State prior to the trial.

4. Mr. Ailey's current counsel has withdrawn his original argument that the Court committed error by failing to charge the lesser included offense of Reckless Aggravated Assault after being provided with cases such as State v. Scott, 2017 WL 568547 and State V. Goodwin, 143 S.W.3d 771 (Tenn. 2004) establishing that under the facts of this case that Reckless Aggravated Assault is not a lesser included offense. He has withdrawn that assertion but instead now invites the Court to commit error by finding that Reckless Aggravated Assault should be a lesser included offense when based upon fearing imminent bodily injury, which is something the Court declines to do. The Court finds that the Jury was given the proper jury instructions and that Mr. Holcomb was not ineffective in this regard.

5. Mr. Ailey next argues that even if any one incident of mistake by Mr. Holcomb is insufficient to grant a new trial by finding him ineffective that the Court should find that the combination of all the mistakes or errors by Mr. Holcomb should equate to a basis for a new trial. The Court would like to point out that one can almost always look at a case and say that I would have done this or that differently; however, the standard of review in a post-conviction analysis does not turn on whether the Court would have tried the case differently or whether a different lawyer would have tried the case differently. The test in Tennessee in determining whether counsel provided effective assistance is whether his performance was within the range of competence demanded of attorneys in criminal cases. Baxter v. Rose, 523 S.W.2d 930 (Tenn. 1975). The petitioner must overcome the presumption that counsel's conduct falls within the wide range of acceptable professional assistance. Strickland v. Washington, 466 U.S. at 668 (1984); Alley v. State, 958 S.W.2d 138, 149 (Tenn. Crim. App. 1997). Therefore, in order to prove a deficiency, a petitioner must show that counsel's acts or omissions were so serious as to fall below an objective standard of reasonableness under prevailing professional norms. Strickland, at 688; Henley v. State, 960 S.W.2d 572 (Tenn. 1998). The Court finds that Mr. Holcomb certainly did not conduct the most thorough investigation and certainly did not try a flawless case; however, the Court finds that those errors did not rise to the level of ineffective assistance of counsel under the law when analyzed under the facts of this case. Mr. Holcomb was confronted with a situation where the facts of the case provided to him from the State through the discovery process as well as the information provided to him by his client both support a finding of guilt. Mr. Ailey testified that he told Mr. Holcomb the facts of the case during their first meeting and those facts simply did not provide Mr. Holcomb with room to craft a defense.
6. The second consideration of the Strickland analysis is the prejudice prong. The Court finds that even if Mr. Holcomb was ineffective based on the cumulative total of mistakes or errors that the results of the case would be the same. Mr. Joe Whiteside's testimony certainly did little to nothing to change or discredit the State's proof, and the same can certainly be said of the testimony of Sandra Cox and Edward Cox. The minor discrepancies that these three witnesses would have created in the trial do not in any way take away from the core facts that the jury heard. Mr. Ailey testified that there were no

threats made to him by Mr. Munsey prior to him firing the pistol in his direction. The Court finds that the testimony from the State's witnesses and the testimony from the defense witnesses including Mr. Ailey plus the additional testimony and information introduced at the motion for new trial leads to the conclusion that Mr. Ailey was not prejudiced by any ineffectiveness of Mr. Holcomb leading up to and during the trial.

7. Considering all the proof that came before the Court and the record as a whole, the Court finds that Mr. Ailey's motion for new trial is denied, and the Court acting as the 13<sup>th</sup> juror affirms the judgment of the jury.

ENTER this the 13 day of November, 2017.

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Alex E. Pearson, Circuit Judge