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. 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 .

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

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

I serve as an Assistant District Attorney General for the 11th Judicial District (Hamilton County) of Tennessee where I act as the Chief Homicide Prosecutor.

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

I was admitted to the Tennessee Bar in 2008. My Board of Professional Responsibility number is 026494.

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 not licensed to practice law in any state other than Tennessee.

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).

My license was placed on inactive military status while I was mobilized for active duty as a member of the Army National Guard. Additional details will be provided in section nineteen (19) below.

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).

My nearly two-decade legal career has spanned prosecution, indigent defense, private practice, and leadership roles across two judicial districts in the state. I first served as an Assistant District Attorney General for the 10th Judicial District from 2007 to 2009, and after returning from military deployment, I resumed that position from 2011 to 2014. I then entered private practice,

first as an associate criminal defense attorney with the law firm of Chancey, Kanavos, Love and Painter from 2014 to 2015. Later I became a solo practitioner focusing primarily on criminal defense from 2015 to 2016. From 2016 to 2018, I served as an Assistant Public Defender for the 10th Judicial District, gaining additional perspective on the defense side of the criminal justice system. I returned to prosecution in 2018 as an Assistant District Attorney General and Team Leader for the 10th Judicial District Attorney's Office, serving in that capacity until 2023, when I became the Chief Homicide Prosecutor for the 11th Judicial District Attorney's Office.

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 not experienced any periods of unemployment in excess of six (6) months.

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.

As the Chief Homicide Prosecutor for the 11th Judicial District, the entirety of my practice is dedicated to 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.

My career has been devoted primarily to the practice of criminal law in the General Sessions Courts, Juvenile Courts and Criminal/Circuit Courts of Southeast Tennessee. Over nearly two decades, I have handled thousands of cases as a prosecutor and hundreds more as a criminal defense attorney. As a private defense attorney, and later Assistant Public Defender, I defended

clients on trial for criminal charges ranging from DUI to aggravated burglary, obtaining not guilty verdicts for my clients. As an Assistant District Attorney General, I have secured jury verdicts which held offenders responsible for crimes spanning from minor drug offenses to first-degree murders.

Beyond trying cases to a jury, I have served as the advisor to Grand Juries of Bradley, Hamilton, McMinn, Monroe, and Polk Counties. From 2018 to 2023, I also served on the Bradley County School Threat Assessment Team, contributing to community safety and interagency coordination. I also participated as a team member of CPIT and VAPIT, ensuring that the most vulnerable Tennesseans received a coordinated, trauma-informed response to abuse and neglect. I also contributed to the legislative process by helping draft proposals that became 2021 Public Chapter 395 and 2024 Public Chapter 987 (The Chris Wright Act). Additionally, I provided POST-approved training for law enforcement officers on the legal standards governing searches and seizures as well as the rules and statutes which govern the issuance and execution of search warrants. My goal with these classes was to ensure that even junior patrol officers understand the constitutional framework within which they must operate, thereby protecting the rights of suspects and promoting the integrity of their investigations into criminal conduct. By emphasizing the importance of early judicial review by way of the search warrant process, I reinforced a culture of accountability and thorough, lawful, and constitutionally sound investigative practices.

While in private practice, I rarely engaged in the practice of civil law. On the occasions when I did represent clients in civil matters, it was usually related to restraining orders or orders of protection. However, I did handle a few family law matters.

I have represented three clients on appeal to the Court of Criminal Appeals and on one occasion presented oral arguments to a panel of the Court in Knoxville, Tennessee. Because the Attorney General represents the State of Tennessee on appeal, I have never had the opportunity to argue an appeal on behalf of the State.

Throughout my career, I have earned a reputation for diligence and reliability—consistently arriving early, staying late, and maintaining a strong work ethic. Colleagues frequently seek my guidance on matters beyond my role as homicide prosecutor, reflecting their trust in my judgment and experience.

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

The 2025 Hamilton County jury trial of *State of Tennessee v. Jason Chen* garnered significant attention locally, nationally and even internationally. Co-counsel and I sought and obtained a conviction for the first-degree murder. We also sought and obtained a sentence of life imprisonment without the possibility of parole.

In the 2021 Bradley County jury trial, *State of Tennessee v. Horatio Derelle Burford*, I sought an obtained a conviction for aggravated assault. On appeal, the Court of Criminal Appeals unequivocally opined that the State's use trial exhibits in opening statement, while "unusual," was not error, paving the way for future attorneys to do the same.

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.

On April 20, 2016, I served as special judge of the Polk County General Sessions Court due to the Judge Baliles scheduled absence. The docket that day was light, with no significant contested matters, and the only hearing involved a defendant's request for reduction in bail.

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 do not have any experience as a guardian ad litem, conservator, or trustee.

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

I have no other legal experience other than what is stated above.

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 have no prior submissions for judgeship of any kind.

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.

I began my academic path at Palm Beach Community College in 1999, completing a single foreign language course while still enrolled in High School to prepare for undergraduate study the following year. I went on to earn a Bachelor of Arts in Sociology from the University of Colorado at Boulder in 2004. Prior to graduation I was inducted into Alpha Kappa Delta, the international sociology honor society. During my time at Colorado, I also served as a justice on the student government Appellate Court, hearing cases involving alleged violations of student campaign finance rules—an early opportunity to engage with principles of fairness, due process, and institutional integrity.

I continued my education at the Cumberland School of Law at Samford University, earning my Juris Doctor in 2007. I completed my degree on-time despite being mobilized with my National Guard unit during the fall semester of my second year to provide services to areas impacted by Hurricane Katrina.

PERSONAL INFORMATION

15. State your age and date of birth.

My date of birth is [redacted] 1982 and I am forty-three (43) years-old.

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

I have lived continuously in Tennessee for the past eighteen (18) years.

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

I have lived continuously in Bradley County for the past eighteen (18) years.

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

In am registered to vote in Bradley 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.

I served as a commissioned officer in the United States Army and the Alabama Army National Guard from 2007 to 2012. From 2010 to 2011, I deployed to Iraq as the commanding officer of the 214th Military Police Company, leading soldiers in a complex operational environment and ensuring the successful execution of our mission. In the months leading up to my deployment, I served on several consecutive "Active-Duty Special Work" orders with the 214th Military Police Company, where I was responsible for preparing the company for its overseas assignment and ensuring the unit met all readiness, training, and logistical requirements.

My military decorations and awards include: Bronze Star Medal, Army Meritorious Service Medal, Army Commendation Medal with oak leaf cluster, National Defense Service Medal, Iraq Campaign Medal with bronze star, Global War on Terror Medal, Humanitarian Service Medal, Army Reserve Component Ribbon with "M" device, Army Overseas Service Ribbon, Army Service Ribbon, Reserve Component Overseas Training Ribbon, and the Alabama Commendation Medal.

I was honorably discharged as a Captain (O-3) in December 2012.

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 been charged with nor 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 under 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 never responded to a formal complaint alleging a breach of ethics or unprofessional conduct.

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

No such procedure has been 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 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.

I have never been a party in any legal proceeding.

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

organizations.

I have not been a member of any such organization within the past five years. Previously I was a member of the Bradley Sunrise Rotary Club in Cleveland, Tennessee where I served as Club President Vice President from 2014 to 2015 and Club President from 2015 to 2016.

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 am not a member of any such organization, association or club.

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.

Chattanooga Bar Association, 2023. I did not hold any office in this organization.

National District Attorneys Association, 2023 to 2026. I have not held any office in the NDAA.

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 Paul Harris fellowship from Rotary International.

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

I have not published any 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.

2025: Meeting General Defenses (Tennessee District Attorneys General Conference New Prosecutor Academy); Closing Argument (Tennessee District Attorneys' General Conference Fall Conference)

2024: Meeting General Defenses (Tennessee District Attorneys General Conference New Prosecutor Academy)

2023: Meeting General Defenses and The Rules of Evidence (Tennessee District Attorneys General Conference New Prosecutor Academy)

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 have not held any public office.

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

I am not presently and 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.

Attached to this application are two responses to Motions to Suppress filed respectively with the Clerk of Court of the Criminal Court of the 10th and 11th Judicial District. These issues addressed by these documents were researched by me without the assistance of anyone else. The

arguments based upon the facts and the law were drafted without the assistance of any other person. Both samples reflect my own personal efforts.

ESSAYS/PERSONAL STATEMENTS

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

After years of serving both as a prosecutor and a defense attorney, and having tried dozens upon dozens of cases, I have seen firsthand how profoundly appellate decisions shape the fairness, clarity, and consistency of our justice system. Trial work taught me the human impact of every ruling; serving on the Court of Criminal Appeals offers the opportunity to ensure that the law is applied with precision, stability, and integrity. I want to serve as an appellate court judge because it will allow me to use the full breadth of my courtroom experience to evaluate legal issues thoughtfully, strengthen the rule of law, and help create clear guidance for courts, attorneys, and the public. My goal is to contribute to a system where outcomes are not only lawful, but grounded in principled reasoning that promotes confidence in justice.

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)***

Throughout my career, I have served the public as both an Assistant District Attorney General and an Assistant Public Defender—roles that limit opportunities for traditional pro bono service but demand deep public service. Even so, I sought additional ways to contribute. As an Assistant District Attorney General, I volunteered at UT Law Clinic expungement clinics in the 10th Judicial District, helping eligible individuals clear their records. I also served on the 10th Judicial District Recovery Court and the Bradley County Juvenile Drug Court from 2008 to 2009, supporting treatment-focused alternatives within the justice system. During my time in private practice with Chancey, Kanavos, Love and Painter, our firm declined to submit claims to the Indigent Defense Fund for appointed criminal defense time.

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)***

Trial courts operate in fast-moving, high-pressure environments. Even the most thoughtful and diligent trial court judges face complex legal questions which warrant a second look. The Court of Criminal Appeals, through its twelve judges, provides structured oversight for the trial courts with the ultimate goal of correcting errors in the proceedings when identified. Such oversight is crucial to the rule of law. Uncorrected errors in the trial courts undermine the fairness of the proceedings. In turn, unfair proceedings erode public confidence in the courts' ability to dispense justice. For this reason, I am drawn to the careful, deliberative work of appellate judging—examining the record, engaging the law with precision, and providing clear guidance that strengthens confidence in our courts. If chosen to serve as a judge of the Tennessee Court of Criminal Appeals, I will bring with me the diligence, thoughtfulness and reliability I have

demonstrated throughout my career.

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)***

Judges serve not only in the courtroom but as visible stewards of public trust, and I believe that role carries an obligation to remain engaged, accessible, and supportive of the communities we serve. I would participate in initiatives that promote access to justice, such as expungement clinics, seek resources for recovery-court programs, and educational outreach about the legal system. I also intend to work with local schools, civic groups, and bar associations to help demystify the courts, increase professionalism and encourage citizen participation in the judicial process through jury service. My goal is to use the position not only to decide cases fairly, but to strengthen confidence in the judiciary by being present, engaged, and committed to the well-being of the communities throughout East Tennessee.

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)***

My life experiences have shaped a perspective grounded in service, resilience, and a deep respect for the rule of law. Serving in the military taught me discipline, accountability, and the ability to make sound decisions under pressure—qualities that translate directly to the careful, steady judgment required of a judge. That experience also instilled a profound appreciation for the freedoms and institutions that define our justice system – institutions that take for granted in the comfort of our homes and offices.

For the past eighteen years, I have served the public as both a prosecutor and a criminal defense attorney. Working on both sides of the courtroom has given me a balanced understanding of the law, the burdens placed on each party, and the human realities behind every case. I have tried dozens upon dozens of cases to a jury, gaining practical insight into how legal decisions affect individuals, families, and communities. This breadth of experience has strengthened my commitment to fairness, clarity, and fidelity to the law.

My most important role, however, is being a husband and the father of a young daughter. Parenthood has deepened my sense of responsibility and sharpened my awareness of how judicial decisions and crime impact the lives of children and families. It reminds me daily of the importance of patience, empathy, and integrity.

Together, these experiences equip me with the judgment, humility, and commitment to public service that I would bring to the bench.

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)***

The rule of law is essential to a fair and functioning society, regardless of my personal views. Throughout my career, I have been guided by a simple principle: the law—not personal preference—must direct every decision. My service as both a prosecutor and a criminal defense attorney over the past eighteen years has reinforced this commitment. As a prosecutor, I routinely enforced statutes whose policy choices I did not shape and sometimes did not personally agree with. My duty was to apply the law faithfully, exercise discretion responsibly, and ensure that justice was pursued within the boundaries set by the legislature and the courts.

Later, as a defense attorney, I often represented individuals charged under laws that at times seemed draconian or unfair to the individual. Even then, my role was not to rewrite the law but to advocate zealously within it, challenge it through proper legal channels when appropriate, and respect the rulings of the court even when outcomes differed from my own views.

My military service further strengthened my respect for lawful authority and the importance of adhering to established rules, especially in high-pressure environments where personal opinions can never substitute for disciplined judgment.

These experiences have taught me that the legitimacy of the judiciary depends on judges who apply the law as written, not as they might wish it to be. If entrusted with judicial responsibility, I will continue to uphold that principle with integrity, impartiality, and respect for the separation of powers.

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. Coty G. Wamp, District Attorney General for the 11th Judicial District [redacted]
B. Stephen D. Crump, Executive Director of Tenn. District Attorneys General Conference [redacted]
C. Shari Tayloe, Staff Attorney and East Tennessee Pro Tem Prosecutor [redacted]
D. Dr. Steven Cogswell, Hamilton County Medical Examiner [redacted]
E. Steve Lawson, Sheriff of Bradley County, Tennessee [redacted]

AFFIRMATION CONCERNING APPLICATION

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

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the Court of Criminal Appeals 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 16, 2026.

Signature

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

IN THE CRIMINAL COURT OF BRADLEY COUNTY, TENNESSEE

STATE OF TENNESSEE, Plaintiff, v. CODY TYLER APPLING, Defendant.	))))))))	Case No.19-CR-368 Hon. Sandra N. C. Donaghy Hearing: 8/28/2020

THE STATE OF TENNESSEE'S RESPONSE TO
MOTION TO SUPPRESS DEFENDANT'S STATEMENTS MADE TO
DEPUTY BLACKWELL

COMES NOW the State of Tennessee, by and through the office of Stephen D. Crump, District Attorney General for the 10th Judicial District to respond to the defendant's Motions to Suppress. In response the State of Tennessee would show Defendant has filed a pleading styled, "Motion to Suppress Defendant's Statements Made to Deputy Blackwell." In particular, the defendant avers that: 1) The officers failed to fully advise Mr. Appling of his rights under *Miranda v. Arizona;* 2) Mr. Appling did not knowingly and voluntarily waive his rights under *Miranda v. Arizona*; 3) The statements are unlawful because they are involuntary; and, 4) The statements are unlawful and therefore the evidence obtained as a result of said statements is also unlawful. Upon information and belief, the State would show:

I. Statement of the Law.

Without a doubt, defendants have a fundamental constitutional right against compelled self-incrimination. See generally, *Miranda v. Arizona*, 384 U.S. 436 (1966). By its own terms, *Miranda* applies to the questioning of an individual who has been "taken into custody or otherwise deprived of his freedom by the authorities in any

significant way." *Id*. at 478. The State concedes that the defendant was, "in custody," for the purposes of this Court's analysis of *Miranda* and its progeny.

Miranda's procedural safeguards require the police to warn a person, prior to any custodial interrogation,

> . . . [T]hat he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Id. Indeed, when Miranda warnings are given and a waiver obtained, the prosecution has, "a virtual ticket of admissibility," for any resulting custodial statement of the defendant. *Missouri v. Seibert*, 542 U.S. 600, 608-09 (2004). "[M]aintaining that a statement is involuntary even though given after warnings and voluntary waiver of rights requires unusual stamina" and usually is a losing argument in court. *Id*. at 609; see also *Berkemer v. McCarty*, 468 U.S. 420, 433 n.20 (1984) ("[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of Miranda are rare.").

II. Assertion that, "The officers failed to fully advise Mr. Appling of his rights under *Miranda v. Arizona*."

Defendant asserts that "the officers" did not administer the procedural safeguards outlined in *Miranda* as discussed above. The state disputes this assertion. In Dakota Blackwell's sworn affidavit, he states, "

> At this time the driver of the vehicle was identified as Mr. Cody Appling. After placing Mr. Appling into custody I asked him why he didn't stop to which he responded "I don't know man I got that bag of meth yall [sic] seen in there." I then observed a clear bag with a crystal like substance

> on the driver seat of the vehicle where Mr. Appling was sitting as well as a set of digital scales. At that time I read Mr. Appling his *Miranda* rights.

Exhibit A. There is no recording of this interaction, nor is there a signed *Miranda* waiver. However, there is no requirement that an admonition of *Miranda* rights take a particular form or that they recorded for posterity. The State avers that the *Miranda* procedural safeguards were administered orally to the defendant.

III. Assertion that, "Mr. Appling did not knowingly and voluntarily waive his rights under *Miranda v. Arizona*," prior to questioning by Deputy Blackwell.

The State concedes that Dakota Blackwell's affidavit is silent as to this particular assertion by the defendant. However, upon information and belief, the State believes the proof will show that the defendant's actions following his admonition indicates a knowing and voluntary waiver of his right to counsel and right to remain silent. Further, the State would show that Deputy Blackwell asked the defendant if he understood his rights and asked the defendant if he wished to waive his rights.

IV. Assertion that, "The statements are unlawful because they are involuntary."

Whether a confession is involuntary is a question of fact. *State v. Willis*, 496 S.W.3d 653, 695 (Tenn. 2016) (citing *State v. Sanders*, 452 S.W.3d 300, 305 (Tenn. 2014)). The State has the burden of establishing the voluntariness of a confession by a preponderance of the evidence. *Id*. (citing *Sanders*, 452 S.W.3d at 305). "The test of voluntariness for confessions under article I, § 9 of the Tennessee Constitution is broader and more protective of individual rights than the test of voluntariness under the

Fifth Amendment." *State v. Smith*, 933 S.W.2d 450, 455 (Tenn. 1996); *accord State v. Freeland*, 451 S.W.3d 791, 815 (Tenn. 2014). When determining whether a confession was made voluntarily, the court must examine the totality of the circumstances, including the "characteristics of the accused and the details of the interrogation." *Id*. (citing Dickerson v. United States, 530 U.S. 428, 434-35 (2000)). These circumstances include:

> [T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured[,] intoxicated[,] or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep[,] or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse.

State v. Climer, 400 S.W.3d 537, 568 (Tenn. 2013) (quoting *State v. Huddleston*, 924 S.W.2d 666, 671 (Tenn. 1996)).

In the instant case, the defendant asserts that the defendant's statement was involuntary, but does not state why he believes that his client's statement on either October 22, 2018 was involuntary. Therefore, the State will set forth all of the factors enumerated above.

a. Defendant was approximately thirty-two years old at the time he was questioned on both October 22, 2018 and October 23, 2018.

b. Defendant states on his Facebook page that he was educated at the "School of Hard Knocks." However, the defendant received a High

School Equivalency Diploma while he was incarcerated in the Polk County Jail in 2019. Exhibit B.

c. The defendant has numerous prior “experiences” with the police and the court system. Exhibit C. Importantly, the defendant waived rights on the following cases in the General Sessions Court before entering a guilty plea: Theft under $500 (09/01/2011), Driving on suspended (04/17/2013), Simple possession and driving on suspended (03/25/2014), Possession of meth (06/23/2016), and Aggravated criminal trespass and theft under $1000 (07/13/2017). Additionally, the defendant entered guilty pleas to the following felony charges in the Criminal Court of Bradley County prior to his interview: Fraudulent use of a credit card over $10,000 (5/12/2014), Aggravated burglary and theft over $500 (8/17/2015), and Theft over $500 (8/17/2015).
d. The defendant’s questioning was neither repeated nor prolonged.
e. Defendant was arrested around 4:13 AM on October 22, 2018 and his questioning by Dakota Blackwell was attendant to that arrest.
f. Defendant was fully advised of his rights.
g. The defendant was not delayed in being brought before a magistrate for arraignment as he was arraigned on October 22, 2018.
h. Defendant, during a subsequent interview asserts that he was under the influence of methamphetamine and Xanax. The State anticipates that the defendant will assert that his intoxication rendered his statement involuntary. However, the State would point out that the

defendant was not too impaired to operate a motor vehicle during a chase with law enforcement.

i. There is nothing to show that the defendant was in physical distress, denied sustenance, or denied sleep.

j. The defendant was not threatened with abuse.

For these reasons, the defendant's waiver of his right to remain silent was voluntary, knowing and intelligent. It is quite simply more likely than not that the defendant freely and voluntarily waived his right to remain silent when he was interviewed by Dakota Blackwell.

V. Assertion that, "The statements are unlawful and therefore the evidence obtained as a result of said statements is also unlawful.

Even if the Court were to determine that the defendant's statement should be suppressed, the defendant's assertion that the evidence obtained as a result of said statements is also unlawful is erroneous and the quantity of methamphetamine found in his vehicle is not subject to suppression. While the State concedes that the search of the defendant's vehicle was absent a search warrant, for the reasons set forth below, the search did not run afoul of constitutional protections.

The Fourth Amendment to the U. S. Const. and art. I, sec. 7 of the Tenn. Const. protect against unreasonable searches and seizures. Any, "warrantless search or seizure is presumed [to be] unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates by a preponderance of the evidence that the search or seizure was conducted pursuant to one of the narrowly

defined exceptions to the warrant requirement." *State v. Simpson*, 968 S.W.2d 776, 780 (Tenn. 1998).

One such exception to the general rule requiring a warrant is the "automobile exception," which permits an officer to search an automobile when there is probable cause to believe that the vehicle contains contraband. *Carroll v. United States*, 267 U.S. 132, 149 (1925). The U.S. Supreme Court provides a two-fold explanation for the exception: (1) it is often impractical for officers to obtain search warrants due to the inherent mobility of automobiles; and (2) an individual's expectation of privacy is reduced in an automobile. *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996); *California v. Carney*, 471 U.S. 386, 392-93 (1985). "Therefore, when an officer has probable cause to believe that an automobile contains contraband, one of two courses of action is constitutionally reasonable: the officer may seize the automobile and obtain a search warrant or instead may search the automobile immediately." *State v. Alberts*, 2016 Tenn. Crim. App. LEXIS 52, at *16 (Crim. App. Jan. 28, 2016) (citing *Chambers v. Maroney*, 399 U.S. 42, 52 (1975)). To establish probable cause, the officer may rely on his observations of evidence which is in plain view. "In Tennessee, the plain view doctrine applies when (1) the objects seized were in plain view; (2) the viewer had a right to be in position for the view; (3) the discovery of the seized object was inadvertent, and (4) the incriminating nature of the object was immediately apparent." State v. Rudd, 2005 Tenn. Crim. App. LEXIS 1007, at *13 (Crim. App. Sep. 12, 2005); see also *State v. Hawkins*, 969 S.W.2d 936, 938 (Tenn. Crim. App. 1997); *State v. Horner*, 605 S.W.2d 835, 836 (Tenn. Crim. App. 1980).

Another exception to the search warrant requirement is the inventory of a vehicle prior to impounding or towing. *See State v. Watkins*, 827 S.W.2d 293, 295 (Tenn. 1992). Generally, in order to impound a vehicle, a "reasonable cause to take [the defendant's] vehicle into custody" must exist; for example, if a vehicle obstructs traffic and the driver cannot arrange for it to be picked up, it may be impounded. *Drinkard v. State*, 584 S.W.2d 650, 653 (Tenn. 1979). When conducting an inventory search, officers may open unlocked containers within a vehicle "when necessary to make a realistic and meaningful inventory." *State v. Glenn*, 649 S.W.2d 584, 589 (Tenn. 1983) (quoting *State v. Roberge*, 642 S.W.2d 716, 720 (Tenn. 1982)).

The State further requests the Court take into account the doctrine of inevitable of discovery. "Under the doctrine of 'inevitable discovery,' . . . illegally obtained evidence will be deemed admissible at trial if the State can establish that the evidence would have inevitably been discovered by lawful means. *State v. Hill*, 333 S.W.3d 106, 123 (Tenn. Crim. App. 2010) (citing *State v. Patton*, 898 S.W.2d 732, 735 (Tenn. Crim. App. 1994).

On October 22, 2018 Deputy Dakota Blackwell was dispatched to a burglary in progress call. He was informed that the suspect was driving a gray pickup truck without a license plate. Deputy Blackwell observed a gray pickup truck with no license plate in close proximity of both time and location to the call for assistance. At this point, the officer had, at a minimum, reasonable suspicion to initiate a brief investigatory stop. The police may stop a vehicle if they have reasonable suspicion based upon specific and articulable facts that a criminal offense has been or is about to be committed. *Terry*

v. Ohio, 392 U.S. 1, 21 (1968); *State v. Harper*, 31 S.W.3d 267, 271 (Tenn. Crim. App. 2000).

However, having received a signal to stop his truck, the defendant failed to stop, leading Deputy Blackwell on what he believes was a six or seven mile chase through Bradley County. When defendant finally stopped, his vehicle was in the roadway blocking a lane of travel. The defendant was apprehended from the passenger compartment of his vehicle. Subsequently, the defendant made a statement which caused the officer to look into the passenger compartment, and on the seat where the defendant was sitting, in plain view, was what the officer recognized to be a quantity of methamphetamine. Moreover, because the defendant's vehicle was blocking the roadway, the officers decided to tow the vehicle. Prior to towing, the officers conducted an inventory of the vehicle's contents. Therefore, even if the court were to determine that the search of the defendant's vehicle for the bag of methamphetamine in plain view violated the U.S. or Tenn. Const., the Bradley County Sheriff's Department would have inevitably discovered the contraband.

WHEREFORE, premise considered, the state prays the court deny the defendant Motions.

Respectfully Submitted,

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IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE
DIVISION III

STATE OF TENNESSEE,	)	
	)	
v.	)	Case No. 315228
	)	
JASON CHEN,	)	
Defendant.	)	

STATE'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS

COMES NOW the State of Tennessee, by and through the office of Coty G. Wamp, District Attorney General for the 11th Judicial District to respond to the third section of the defendant's Motion to Suppress. In response the State would show:

I. Search warrant for T-Mobile data.

a. The warrant is not based on "tainted probable cause" for the reasons set forth by this Court in the July 29, 2024 Order denying the defendant's Motion to Suppress. Therefore, the defendant is not entitled to relief.

b. This court rejected the defendant's argument regarding the use of the term "missing person's case," on search warrants as part of the Order entered July 29, 2024. Therefore, the defendant's argument on this issue should be denied.

c. Subsequent search warrant issued by Judge Dunn for T-Mobile data cures and abrogates defendant's argument as to the issuing magistrate not being a court of competent jurisdiction.

d. Defendant lacks standing to challenge the search of the T-Mobile data.

Search and seizure law originates from constitutional provisions. On the national level, "The right of the people to be secure in *their* persons, houses, papers, and effects, against

unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. IV (emphasis added). Likewise, the Tennessee Constitution guarantees, "[t]hat the people shall be secure in *their* persons, houses, papers and possessions, from unreasonable searches and seizures. . ." Tenn. Const. Art. I § 7 (emphasis added). These rights are personal in nature, and "'they may be enforced by exclusion of evidence only at the instance of one whose own protection was infringed by the search and seizure.'" *State v. Ross*, 49 S.W.3d 833, 840 (Tenn. 2001) (quoting *Simmons v. United States*, 390 U.S. 377, 389 (1968)). "In order to challenge the reasonableness of a search or seizure, the defendant must have a legitimate expectation of privacy in the place or thing to be searched." *State v. Cothran*, 115 S.W.3d 513, 520-21 (Tenn. Crim. App. 2003). To determine whether there is an expectation of privacy in a place to be searched, courts utilize a two-prong test: "(1) whether the individual had an actual, subjective expectation of privacy and (2) whether society is willing to view the individual's subjective expectation of privacy as reasonable and justifiable under the circumstances." *State v. Munn*, 56 S.W.3d 486, 494 (Tenn. 2001). Put another way, a defendant who wishes to assert constitutional violation "has had *his own* Fourth Amendment rights infringed by the search and seizure which he seeks to challenge." *Byrd v. United States*, 584 U.S. 395, 403 (2018) (emphasis added). Failure to establish an expectation of privacy in the place to be searched results in a lack of "standing" to challenge the search. *State v. Patterson*, 966 S.W.2d 435, 441 n. 5 (Tenn. Crim. App. 1997).

Prior to the case of *Carpenter v. United States*, cellphone subscriber data was analyzed under the third-party records analysis. See, *e.g.*, *United States v. Miller*, 425 U.S. 435 (1976) (Recognizing that there is no expectation of privacy in records which are in the possession third-

parties). Black's Law dictionary defines a third-party as, "A person who is not a party to a lawsuit. . ." In the context of a criminal prosecution, the principal actors are the government and the defendant(s). In most situations, a cellphone provider would be a "third-party" because they are not a named party to the action. Because there is no expectation of privacy in records held by third-parties, law enforcement may seize these records without having to first obtain a search warrant. Other methods utilized to obtain third-party records includes subpoenas. However, the Supreme Court in *Carpenter* held that *generally* law enforcement must obtain a search warrant before seizing cellphone records held by third-party cellular phone companies. *Carpenter v. United States*, 585 U.S. 296 (2018).

Germane to this court's consideration are the issues of and the defendant's expectation of privacy in this case it is important to point out several distinctions between the case at bar and the facts presented upon appeal in *Carpenter*. In *Carpenter*, the defendant was the account holder for the cellphone records. See *e.g.*, *Carpenter,* 585 U.S. at 310 ("The location information obtained from Carpenter's wireless carriers was the product of a search."), *Id.* at 301 ("prosecutors applied for court orders under the Stored Communications Act to obtain cell phone records for petitioner Timothy Carpenter…"). As will be discussed below, the T-Mobile records obtained by the Chattanooga Police Department's search warrant belong to another.

In the instant case, the cellphone records are the property of two "persons." The first being the cellphone provider, T-Mobile (a corporation conducting business in the State of Tennessee), and the second being Min Y Chen, date of birth of 8/15/1972, residing at 1943 Ashburn Ct, Nolensville, TN 37135. Appendix A. The defendant describes 1943 Ashburn Ct., Nolensville, TN as, "his parents' residence." Def. Mot. p 26; Def. Mot. Ex. J; Def. Mot. Ex. K. Nowhere in the data provided by T-Mobile does the defendant's name appear. Min Y Chen pays

for the service connected with (615) 839-6880. Appendix A. Therefore, T-Mobile has standing to challenge the search and Seizure of their records. Likewise Min Y Chen has standing to challenge the search and seizure of his T-Mobile records.

The proof would show that the defendant is not an authorized user. They would also show that he is not the T-Mobile account holder. They show that the defendant lacks the ability to modify his father's T-Mobile account. Because the defendant is not an authorized user or account holder, he lacks the ability to accept or reject terms of service. Because the defendant is not an authorized user or account holder, he lacks the ability to terminate his father's T-Mobile account. Because defendant is not the account holder, defendant lacks the ability to exclude others from being added to his father's T-Mobile account. In sum, the defendant lacks any dominion over the account, and, most importantly, the records associated therewith. As such, this defendant lacks standing to challenge the seizure of his father's third-party T-Mobile records, whereas he would have standing the challenge the search of the physical cellphone.

e. The records were obtained by means of a search warrant supported by probable cause issued by a neutral and detached magistrate.

"The Fourth Amendment to the United States Constitution and article I, section 7 of the Tennessee Constitution safeguard individuals from unreasonable searches and seizures." *State v. Hannah*, 259 S.W.3d 716, 720 (Tenn. 2008). "[S]earches and seizures conducted pursuant to warrants are presumptively reasonable," whereas "warrantless searches and seizures are presumptively unreasonable." *State v. McCormick*, 494 S.W.3d 673, 678–79 (Tenn. 2016) (internal citations committed). Generally, search warrants will not issue "unless a neutral and detached magistrate determines that probable cause exists for their issuance." *State v. Tuttle*, 515

S.W.3d 282, 299 (Tenn. 2017) (citing *Illinois v. Gates*, 462 U.S. 213, 240 (1983)). Defendant bears the burden of overcoming the presumption of reasonableness.

Contrary to the defendant's argument, the affidavit in support of the search warrant does establish probable cause. In determining whether probable cause exists to support the issuance of a search warrant, only the information contained within the four corners of the affidavit may be considered. *State v. Keith*, 978 S.W.2d 861, 870 (Tenn. 1998). Judicial review of the existence of probable cause will not include looking to other evidence provided to or known by the issuing magistrate or possessed by the affiant. *State v. Moon*, 841 S.W.2d 336, 338 (Tenn. Crim. App. 1992). The sufficiency of the search warrant affidavit must be determined from the allegations contained in the affidavit alone. *State v. Norris*, 47 S.W.3d 457, 468 (Tenn. Crim. App. May 31, 2000).

A magistrate's probable cause determination is accorded "great deference" by a reviewing court. *State v. Jacumin*, 778 S.W.2d 430, 431-432 (Tenn. 1989). The standard of review for probable cause determinations is whether the magistrate had a substantial basis for concluding that a search warrant would uncover evidence of wrongdoing. *Norris*, 47 S.W.3d 457, 468 (Tenn. Crim. App. May 31, 2000). Probable cause "exists when facts and circumstances demonstrated by an underlying affidavit are sufficient in themselves to warrant a person of reasonable caution to believe that certain items are the fruits of illegal activity and are to be found at a certain place." *Id*. The courts must read the language in a commonsense and practical manner, giving the affiant's words their natural meaning and interpretation. *Id*.

The affidavit for a search warrant must contain more than mere conclusory allegations by the affiant. *State v. Stevens*, 989 S.W.2d 290, 293 (Tenn. 1999). But, there is no requirement that each factual allegation in the affidavit be independently documented. Tenn. R. Crim. P. 41(c);

State v. Baron, 659 S.W.2d 811, 815 (Tenn. Crim. App. 1983). Further, the magistrate reviewing the affidavit may assist the affiant in its preparation. *State v. Nolan*, 617 S.W.2d 174, 176 Tenn. Crim. App. 1981). This does not detract from a magistrate's independent judgement; rather, it demonstrates it. *Id*.

The finding of probable cause may be based upon hearsay evidence "in whole or in part provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished." *State v. Raspberry*, 640 S.W.2d 227 (Tenn. Crim. App. 1982). The Tennessee Supreme Court adopted the Gates totality of the circumstances test for determining whether an affidavit in support of a search warrant that includes information from a criminal informant establishes probable cause, overruling *Jacumin* insofar as its reliance on the *Aguilar/Spinelli* test. *State v. Tuttle*, 515 S.W.3d 282, 307-8 (Tenn. 2017). An informant's veracity, reliability, and basis of knowledge are relevant under this "analysis but 'should be understood simply as closely intertwined issues that may usefully illuminate the commonsense, practical question whether there is 'probable cause' to believe that contraband or evidence is located in a particular place.'" *Id*. at 303 (citing *Illinois v. Gates*, 462 U.S. 213, 230 (1983)).

Finally, a magistrate's probable cause determination is a judicial act. *Lea v. State*, 181 Tenn. 378, 381 (Tenn. 1944). What evidence is to be placed before the magistrate to determine whether probable cause exists is for the magistrate to determine. *Id*. The Tennessee Supreme Court stated, "[W]hat particular, or specific, facts shall be placed before the magistrate in order to justify the exercise of his discretion in determining whether or not 'probable cause' exists is for the magistrate himself to determine, provided only that it appears from the face of the affidavit

that there was material evidence before him supporting his action. To this extent only will this Court review his action." *Id*. at 381-82.

Probable cause has been defined as "reasonable grounds for suspicion, supported by circumstances indicative of an illegal act." *State v. Stevens*, 989 S.W.2d 290, 293 (Tenn. 1999). Probable cause is based on probabilities. *Brinegar v. United States*, 338 U.S. 160, *175 (1949). There must be more than mere suspicion, but there is no requirement of proof beyond a reasonable doubt. *Wong Sun v. United States*, 371 U.S. 471, 479 (1963).

Probable cause has no precise definition, but it is basically a common sense, non-technical conception that deals "with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *State v. Keith*, 978 S.W.2d 861, 867 (Tenn. 1998), citing *Ornelas v. United States*, 517 U.S. 690, 699 (1996). The evidence to be reviewed in making a probable cause determination must be "weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *Illinois v. Gates*, 462 U.S. at 232. "Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers." *Id*. at 231-32.

Regarding affidavits for search warrants, the United States Supreme Court has "recognized that affidavits 'are normally drafted by nonlawyers in the midst and haste of a criminal investigation." *Id*. at 235 (citing *United States v. Ventresca*, 380 U.S. 102, 108 (1965)). The Supreme Court goes on to provide context in which the trial court should review a magistrate's probable cause determination: Similarly, we have repeatedly said that after-the-fact scrutiny by courts of the sufficiency of an affidavit should not take the form of de novo review. A magistrate's "determination of probable cause should be paid great deference by reviewing

courts." *Spinelli*, supra, at 419. "A grudging or negative attitude by reviewing courts toward warrants," *Ventresca*, 380 U.S., at 108, is inconsistent with the Fourth Amendment's strong preference for searches conducted pursuant to a warrant; "courts should not invalidate [warrants] by interpreting [affidavits] in a hypertechnical, rather than a commonsense, manner." *Id*. at 236 (emphasis added) (citing *Ventresca*, 380 U.S at 109).

Further, in its probable cause analysis, the trial court is under no obligation to suppress if more than one reasonable explanation for the evidence presented exists; rather, as stated by the Court of Appeals for the 6th Circuit, "the key consideration, and one that must be done on a case-by-case basis, is not whether more than one conclusion is possible, but whether more than one conclusion is reasonably possible. *Keyes v. Ervin*, 92 F. Appx 232, 241 (6th Cir. 2004).

In this case, the search was conducted pursuant to a warrant issued by Magistrate Ron Powers. See, Def. Mot. Exhibit H. In light of the aforementioned law, and application of said law to the search warrant affidavit, this court should find the affidavit and warrant for T-Mobile records to be legally sufficient. T-Mobile provided the records the defendant seeks to suppress only after law enforcement submitted a signed search warrant to T-Mobile through that company's preferred method of service.

f. Magistrate Powers has the authority to issue the warrant.

When courts use the word "magistrate" in the context of addressing constitutional search and seizure issues, the term generally refers to those persons authorized by law to "issue warrants." *Shadwick v. Tampa*, 407 U.S. 345, 348 (1972) (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 449–53 (1971); *Whiteley v. Warden*, 401 U.S. 560, 566 (1971); *Katz v. United* States, 389 U.S. 347, 356–57 (1967); *United States v. Ventresca*, 380 U.S. 102, 108 (1965); *Giordenello v. United States*, 357 U.S. 480, 486 (1958); *Johnson v. United States*, 333 U.S. 10,

13–14, (1948)). Who is, and who is not, considered a magistrate is not set in stone, and "States are entitled to some flexibility and leeway in their designation of magistrates, so long as all are neutral and detached and capable of the probable-cause determination required of them." *Shadwick v. City of Tampa*, 407 U.S. 345, 354 (1972).

Turning now to the Stored Wire and Electronic Communications and Transactional Records Access Act (18 U.S.C. § 2701, et seq.), search warrants for electronically stored data may be issued, "using State warrant procedures…" by a "court of competent jurisdiction." 18 U.S.C. § 2703(a). This statute expressly permits state and local law enforcement officers in their respective jurisdictions to draft, seek and obtain search warrants using the laws and judicial officers with whom they are accustomed. The Stored Wire and Electronic Communications and Transactional Records Access Act (hereafter, "SCA,") defines a "court of competent jurisdiction" as, "a court of general criminal jurisdiction of a State authorized by the law of that State to issue search warrants." 18 U.S.C. § 2711. Further, the term "court of competent jurisdiction" has a recognized legal meaning. That term is used to describe an entity that has the legal authority to act on the matter at hand. *United States v. Morton*, 467 U.S. 822 (1984). As that case also shows, determining whether a state entity is a court of competent jurisdiction within the meaning of a federal statute is a question of state law. *Id*. at 833-4. In deciding this case and this motion, the court must look to Tennessee law to determine what is or is not a court of competent jurisdiction. This inquiry is governed by Tenn. R. Crim. P. 41, and Title 40 of the Tennessee Code.

Defendant asserts that magistrate in this case lacked the authority to issue the search warrant for the T-Mobile data associated with the phone number (615) 839-6880 between the dates of 11/21/2022 and 11/28/2022. Specifically, the magistrate in this case is Ron Powers, a

full-time magistrate for Hamilton County. In Tennessee, the term "magistrate" has a specific definition, and constitutes, "The judges of the supreme, appellate, chancery, circuit, general sessions and juvenile courts throughout the state, judicial commissioners and county mayors in those officers' respective counties, and the presiding officer of any municipal or city court within the limit of their respective corporations, are magistrates within the meaning of this title." Tenn. Code Ann. § 40-1-106. As under federal law, the objective of statutory construction under state law is to ascertain legislative intent. *Griffin v. State*, 182 S.W.3d 795 (Tenn. 2006). If the meaning of the statutory language is clear, it must be interpreted as it is written. *In re Audrey S.*, 182 S.W. 3d 838 (Tenn. App. 2005). In Tennessee, the difference between a "magistrate" and "judicial commissioner" is only the size of the county in which they serve. Compare Tenn. Code Ann. § 40-1-111(a) with (g) and (h). These titles are used interchangeably, based on colloquial preferences. Tenn. Code Ann. § 40-1-106 clearly and unambiguously authorizes neutral and detached judicial commissioners to issue search and seizure warrants among others. Defendants have tried, and failed, to challenge the issuance of search warrants issued by magistrates/judicial commissioners in Federal Court. *United States v. Pennington*, 328 F.3d 215, 219 (6th Cir. 2003) ("constitutional challenge to the authority of a Shelby County Judicial Commissioner to issue a valid search warrant is without merit."); *United States v. King*, 951 F.2d 350 (6th Cir. 1991)("[W]e hold that Ms. Flowers, although a lay commissioner, had the necessary authority and competence to issue a legitimate search warrant."); See also, *Shadwick v. City of Tampa*, 407 U.S. 345, 352, (1972) ("Communities may have sound reasons for delegating the responsibility of issuing warrants to competent personnel other than judges…").

"In determining whether or not probable cause exists for the issuance of a search warrant, the issuing magistrate performs a judicial act." *Squires v. State*, 525 S.W.2d 686, 690 (Tenn.

Crim. App. 1975). A judicial act is: "A determination of that the law is and the relation to some existing thing done or happened. Such an act is to be distinguished from a legislative act which predetermines what the law shall be for the regulation of future cases." Ballentine's Law Dictionary, p. 700. Alternatively, it is "An act performed by a court touching the rights of parties or property brought before it by voluntary appearance, or by the prior action of ministerial officers; in short, by ministerial acts." Vol. 1 Bouv. Law. Dict., Rawle's Third Revision, p. 116. At least one court of this state, "approve[s] the definitions of 'a judicial act' as being 'An act resulting from judgment or discretion based upon evidence received at hearing provided by law.'" *Mayor of City of Jackson v. Thomas*, 313 S.W.2d 468, 482 (1957). This definition underscores that a judicial act involves a formal assessment or resolution of legal matters by a court or judge, rather than mere administrative or procedural tasks.

The warrant at issue in this case was issued by Ron Powers, a person authorized by Tennessee law to issue a search warrant. That Ron Powers was a neutral and detached "magistrate." Because Ron Powers was expressly authorized to, and did conduct a probable cause determination, he was performing a judicial act. In the exercising of his discretion as to the sufficiency of probable cause, he was acting as a court of competent jurisdiction. In furtherance of this argument the state would direct this Court to the Supreme Court's Rules. "A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including but not limited to an officer such as a *magistrate*, referee, court commissioner, *judicial commissioner*, special master, or an administrative judge or hearing officer." Tenn. Sup. Ct. R. 10 § I (B). The defendant's motion should be denied.

g. The search warrant was served in Hamilton County.

In the instant case, Det. Bulkley served the warrant in Hamilton County, Tennessee by transmitting the signed warrant to T-Mobile. This case is similar to the case of *State v. Hoskins*, in that case, the defendant sought to suppress a Knox County warrant for cellular records retained in North Palm Beach, Florida. Specifically, the defendant argued that the, "judge who signed the search warrant lacked authority to issue a warrant for property located outside of his jurisdiction because the business address of AT&T, listed on the search warrant, was in North Palm Beach, Florida, rather than in Tennessee." *State v. Hoskins*, No. E2020-00052-CCA-R3-CD, 2021 WL 2964331, at *1 (Tenn. Crim. App. July 15, 2021). In rejecting the Hoskins' argument, the trial court and the Court of Criminal Appeals found that the electronic records sought by a Knox County search warrant, "could be accessed," in Knox County. *Id*. at *14. The court further rejected the defendant's argument that because the out of state address, the warrant was executed out of state. *Id*. at *10. The Court of Criminal Appeals in denying the defendant's request for appellate relief relied on the trial court's findings regarding the out of state address listed on the warrant,

> [I]t would appear that search warrant was issued here in Knox County, Tennessee, and the records were apparently lodged or were stored, or whatever, in North Palm Beach, Florida. And I'm aware that a Trial Court's jurisdiction to compel anyone to turn over material or to comply with a search warrant is limited to the geographic limitations of the State of Tennessee.
>
> However, what appears to be happening here is that these are -- these communication providing businesses to do business here in -- in Knox County, Tennessee, are in Tennessee and their presence is nationwide, maybe global, I don't know. And what they have in one place, they have in all of their places. It's not like we're talking about specific pieces of paper that can only be in one place or another. This is digital information, which can be accessed from many different places.
>
> So my interpretation of what happened is that the Court -- the Knox County Judge issued an order to this business for them to turn over certain records. And the company -- rather than challenge the Court's authority,

> the company is simply asking for the State to facilitate this process by faxing the warrant to another state, after which they comply and send the records to the -- to the state.
>
> So I don't -- it would not appear that a Tennessee Judge is actually compelling disclosure in Florida. It is simply the way the business has asked for the matter -- for this process to occur, wherein a [S]tate of Tennessee search warrant can be honored even though they digital -- digitally stored materials may be in a different state. At any rate, I don't see that this is a search conducted in violation of the service provider's rights or the defendant's rights. So the Court would deny the motion to suppress on that ground.

State v. Hoskins, No. E202000052CCAR3CD, 2021 WL 2964331, at *12 (Tenn. Crim. App. July 15, 2021). For the reasons set forth in *Hoskins*, the court should deny the defendant's motion to suppress.

h. Suppression is not an appropriate remedy.

Defendant's constitutional arguments under the 4th Amendment and Tenn .Const. art. 1 § 7 fall short because a neutral and detached magistrate made a probable cause determination and issued a search and seizure warrant. By first obtaining a search warrant, law enforcement complied with *Capenter's* holding. That is that third-party cellphone data be obtained through a search warrant rather than a subpoena. As discussed above, the warrant is facially valid, and therefore it complies with the 4th amendment. Therefore, the defendant can only pursue remedies afforded under 18 U.S.C. § 2708.

Assuming *arguendo*, that the defendant has standing to challenge the search warrant for his father's T-Mobile records, and that the search warrant in this case complies with U.S. and Tennessee constitutional law, but the search warrant does not comply with the "court of competent jurisdiction" or any other provision of 18 U.S.C. § 2703(a), suppression is not a remedy available to the defendant. Quite simply, "[S]uppression is not a remedy for a violation of the Stored Communications Act." *United States v. Guerrero*, 768 F.3d 351, 358 (5th Cir.

2014). Congress could not have been clearer on this point. See 18 U.S.C. § 2708 ("The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter."); *Id*. §§ 2701, 2707, 2710, 2712 (authorizing certain civil, criminal, and administrative remedies, but not suppression). For the defendant to suppress his father's T-Mobile data, he, "must show that the ... data was obtained not just in violation of the [SCA], *but also* in violation of the Fourth Amendment." *Guerrero*, 768 F.3d at 358.

i. Good faith exception.

For many years, the Tennessee Supreme Court declined to create a good faith exception to the exclusionary rule. However, in 2016 the Tennessee Court had a change of heart. *State v. Reynolds*, 504 S.W.3d 283 (2016). The exclusionary rule is neither constitutionally mandated or guaranteed – it is a creation of the judicial branch. See *United States v. Calandra*, 414 U.S. 338, 348 (1974) (stating that the exclusionary "rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved."). And as a creation of the courts, the courts can create any number of exceptions to the rule.

In the context of judicial commissioners, the case of *United States v. Malveaux*, 350 F.3d 555, 558 (6th Cir. 2003) is instructive. In it, the 6th Circuit Court applied the good faith exception to a case arising from a warrant issued by a Hamilton County magistrate/judicial commissioner. The court reasoned, "Commissioner Meeks issued the search warrant under Tennessee law. As Commissioner Meeks was legally appointed under Tennessee law, he had the apparent authority to issue the warrant to search Malveaux's hotel room. Pursuant to both *Pennington* and *Leon*, the police officers, acting in good faith, relied upon Commissioner

Meeks's apparent authority to issue the search warrant." *United States v. Malveaux*, 350 F.3d 555, 558 (6th Cir. 2003).

In the case of *United States v. Leon*, the Supreme Court examined a situation where officers relied in good faith on a "facially valid" search warrant which was later determined to be invalid due to insufficiency of probable cause. *United States v. Leon*, 468 U.S. 897, 902 (1984). Despite the case being a possession of marijuana case, the Supreme Court reasoned, "excluding the evidence will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that ... the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty." *Id*. at 920, quoting *Stone v. Powell*, 428 U.S. 465, 539–540 (1976). Indeed a rigid, unforgiving application of the exclusionary rule exacts a heavy toll on society. "The substantial social costs exacted by the exclusionary rule for the vindication of Fourth Amendment rights have long been a source of concern. Our cases have consistently recognized that unbending application of the exclusionary sanction to enforce ideals of governmental rectitude would impede unacceptably the truth-finding functions of judge and jury." *Id*. at 907.

As such, should the court find that the warrant is invalid, the State asks the court to conduct a good faith analysis.

II. Remains of Jasmine Pace

a. Warrant for cellphone location data was valid.

For the reasons set forth above, the warrant issued for the production of the T-Mobile data was valid. Therefore, the fruit of the poisonous tree analysis is not applicable to the discovery of this evidence.

b. Inevitable discovery.

Tennessee courts have long interpreted the inevitable discovery doctrine as requiring more than a mere showing that evidence could have been obtained through independent and lawful means; rather, the proof of inevitable discovery must show, with a level of certainty, that the evidence would have been obtained based on "no[n-]speculative elements ... focuse[d] on demonstrated historical facts capable of ready verification or impeachment." *State v. Hill*, 333 S.W.3d 106, 123 (Tenn. Crim. App 2010). Before the inevitable discovery doctrine may be applied, the State must demonstrate "first, that certain proper and predictable investigatory procedures would have been utilized in the case at bar, and second, that those procedures would have inevitably resulted in the discovery of the evidence in question." *State v. Coury*, 657 S.W.2d 777, 780 (Tenn. Crim. App. 1983). The level of certainty required for the application of this doctrine is preponderance of the evidence. *State v. Williams*, 784 S.W.2d 660, 664 (Tenn. Crim. App. 1989). By its very nature, an inquiry of this type is fact intensive.

On information and belief, the State would show that prior to the receipt of any T-Mobile records, CPD investigators had conducted a search of the defendant's apartment at 110 Tremont Street. The search of the defendant's apartment took place on November 28, 2022. During that search the investigators found a large quantity of suspected blood along with numerous other items. It was apparent to the investigators that the quantity of blood indicated that the apartment was likely the scene of a homicide. On November 23, 2022, CPD Investigator Seech interviewed a witness who indicated that she had heard a scream at approximate 2:15 am on November 23, 2022. Armed with this information, investigators expanded the scope of their search. The CPD homicide unit began to compile a list of locations where a person on the Chattanooga North Shore would likely dispose of a body. One of the locations identified for

search was Suck Creek Road due to its close proximity to the defendant's apartment. On December 1, 2022 investigators had planned to begin canvassing the area when they received the T-Mobile data. The victim's body was located in a suitcase a very short distance from the parking area at 1600 Suck Creek Road. See Appendix B (The red circle approximates location). According to the Hamilton County GIS Records, this location is owned by the Signal Mountain Cement Company. The body was located near a wooden stake with orange flagging material. Appendix C, Appendix D. This wooden stake acts as a marker and indicates that people have visited this location and intend to return for surveying and/or utility work. The victim's body would have begun to omit the distinct odor of decomposition. This odor is very pungent and is easily recognizable.

On August 2, 2024 District Attorney Investigator Michael Ray went to the location where the victim's body was found. There were signs of recent human activity at the location including a trail and orange spray paint on Kudzu leaves in the same general area as the marker. On information and belief, the Hamilton County Wastewater Authority is about to begin work/improvements at the location where the victim's body was located and had earlier in 2024 utilized the location of the body to stage timber which was felled in an adjoining track of land. Further, the Hamilton County Public Works/Trash Pickup program conducts routine trash pickup along Suck Creek Road where the victim's body was located.

In sum, Jasmine Pace's body would have been located without the T-Mobile data. The discovery of the body may have been less expedient, but it would have been found. Therefore, the Court should find that that inevitable discovery doctrine should apply in this instance.

III. Walgreens Surveillance Video

a. Defendant lacks standing to challenge the collection of a Walgreens surveillance video for the reasons set forth above in the standing argument regarding the T-Mobile records.

b. Defendant's cellphone records were not utilized.

Defendant asserts that, the Walgreens video was obtained "By utilizing the Defendant's mobile phone data…" Def. Mot. p 25. In the instant case, a package of Bounty brand paper towels was discovered during the execution of the search warrant for the defendant's apartment. Def. Mot. Exhibit I. This warrant was executed on November 27, 2022. The packaging for the paper towels included a sticker which reads, "Walgreen Drug Store[,] 110 N Market Street[,] Chattanooga, TN 37405." Def. Mot. Exhibit I. On November 28, 2022 at before noon, armed with knowledge of the sticker on the Bounty packaging, Detective Haleigh Cottrell went to the Walgreens located at 110 North Market Street, Chattanooga, Tennessee and obtained the video surveillance video. The warrant for the defendant's cellphone data was not sought until 7:45 PM on November 28, 2022 – hours after Detective Cottrell obtained the video from Walgreens. Def. Mot. Exhibit H. Detective Bulkley's affidavit in support of the search warrant to obtain the defendant cellphone information specifically included a paragraph that Detective Cottrell had reviewed the Walgreens video and observed the defendant purchasing paper towels. Def. Not. Exhibit H. Specifically, the affidavit states, "1112812022, investigators located surveillance footage from Walgreens Pharmacy, located at 110 N Market St., less than a quarter mile away from 110 Tremont Street. Footage shows Jason Chen inside the store at approximately 1900 hours an 11123/2022. Investigators determined Jason Chen had purchased rubbing alcohol, hydrogen peroxide, and a six-pack of Bounty paper towels for a total of $28.06." *Id*. The defendant's cellphone data was not received from T-Mobile wireless until two days later on

December 1, 2022. It was therefore impossible for Detective Cottrell to have utilized defendant's mobile phone data on the morning of November 28, 2022. Defendant is not entitled to relief.

c. Fruit of the poisonous tree.

The fruit of the poisonous tree applies to situations in which a constitutionally infirm discovery of evidence or information is utilized or is relied upon to obtain additional evidence. Unless attenuated, subsequently discovered evidence may be suppression under the Exclusionary Rule, discussed above. However, the fruit of the poisonous tree doctrine is inapplicable to the Walgreens video. The search of the defendant's apartment which led to the discovery of the paper towels was not constitutionally deficient for the reasons set forth by the court in its July 29, 2024 Order denying the defendant's Motion to Suppress the search of his apartment. Therefore, defendant is not entitled to relief under the fruit of the poisonous tree doctrine.

IV. Walmart Surveillance Video

a. Defendant lacks standing to challenge the means or method of the collection of Walmart surveillance video for the reasons discussed above.

b. Independent source and/or inevitable discovery doctrine.

Even if there is an abstract constitutional infirmity present, the independent source doctrine or inevitable discovery doctrine should apply. These doctrines permit the admission of evidence that would have been discovered legally even if the initial means of the discovery of the evidence was illegal. In such a situation, the state must demonstrate that the evidence would have inevitably been discovered through lawful means, independent of any misconduct. See *State v. Scott*, 619 S.W.3d 196 (2021), *State v. Guy*, 679 S.W.3d 632 (2023), *State v. Brock*, 327 S.W.3d 645 (2009). This doctrine is grounded in the principle that the exclusionary rule should

not apply when its remedial purposes are not served, such as when evidence would have been obtained legally regardless of the initial illegality. *Scott*, 619 S.W.3d at 196.

V. Defendant's travel to Nolensville and General Location

a. Grounds for suppression not present.

In Tennessee, the suppression of evidence in criminal proceedings is governed by several rules and principles primarily centered around the exclusionary rule. The general categories of evidence that are ripe for suppression include evidence obtained through violations of constitutional rights, such as unlawful searches and seizures, custodial interrogations without *Miranda* warnings, and coerced confessions. All of the categories have one thing in common: They all implicate a constitutional right. Defendant cites no authority or constitutional infirmity to suppress a "general location," or information that the defendant traveled to Nolensville, Tennessee after the murder of Jasmine Pace.

b. Exigency.

In the instant case, law enforcement sought and obtained an exigent circumstances "ping" of the defendant's cellphone location on November 28, 2022. That exigency "ping" showed the location of the defendant's phone to be in Nolensville, Tennessee. The Supreme Court has described "exigency" as the "need to assist persons who are seriously injured or threatened with such injury." *Caniglia v. Strom*, 593 U.S. 194, 206 (2021). The test to determine exigent circumstances "is an objective one that turns on ... the totality of circumstances confronting law enforcement agents in the particular case." *United States v. MacDonald*, 916 F.2d 766, 769 (2d Cir. 1990). In light of the circumstances known to law enforcement, specifically that Jasmine Pace was missing from a location where they had located copious quantities of suspected blood, it was entirely reasonable to conduct a ping of Jason Chen's phone to try to locate Jasmine Pace.

As Detective Slaughter wrote in his November 29, 2022 warrant for Jason Chen's DNA, Fingerprints and photographs, "it is imperative to locate the victim as soon possible." Def. Mot. Exhibit O.

c. Exceptions.

Even if there is a constitutional infirmity present in this case, the independent source doctrine or inevitable discovery doctrine should apply. These doctrines permit the admission of evidence that would have been discovered legally even if the initial means of the discovery of the evidence was illegal. In such a situation, the state must demonstrate that the evidence would have inevitably been discovered through lawful means, independent of any misconduct. See *State v. Scott*, 619 S.W.3d 196 (2021), *State v. Guy*, 679 S.W.3d 632 (2023), *State v. Brock*, 327 S.W.3d 645 (2009). This doctrine is grounded in the principle that the exclusionary rule should not apply when its remedial purposes are not served, such as when evidence would have been obtained legally regardless of the initial illegality. State v. Scott, 619 S.W.3d 196 (2021).

As the court is well aware, the family of Jasmine Pace was doing everything they could to try to locate Jasmine. On information and belief, the family of Jasmine Pace had determined that the defendant was in Nolensville by monitoring his publicly available information.

VI. Search of the defendant's bedroom.

a. Police obtained a warrant before searching the defendant's bedroom in Nolensville, Tennessee. Def. Mot. Exhibit J. The defendant bears the burden of overcoming the presumption of reasonableness of this search and seizure.

b. The warrant is not based on tainted probable cause for the reasons set forth by the court in its July 29, 2024 Order denying the defendant's Motion to Suppress.

c. This search is not fruit of the poisonous tree.

VII. Search of the defendant's Vehicle

a. Police obtained a warrant before searching the defendant's vehicle. Def. Mot. Exhibit N. Because the search of the defendant's vehicle was the result of a search warrant, the defendant bears the burden of overcoming the presumption of reasonableness of the search and seizure.

b. The warrant is not based on tainted probable cause for the reasons set forth by the court in its July 29, 2024 Order denying the defendant's Motion to Suppress.

c. This search is not fruit of the poisonous tree.

VIII. DNA, Fingerprints, Hair Follicle and Photographs

a. Police obtained a warrant before collecting samples from the defendant and taking photographs of the defendant. Def. Mot. Exhibit P; Def. Mot. Exhibit R. Because the samples and photographs were obtained by means of a search warrant, the Defendant bears the burden of overcoming the presumption of reasonableness of the search and seizure.

b. Tenn. R. Crim. P. 41 allows for electronic warrant application. On information and belief the rule was followed.

c. The warrant is not based on tainted probable cause for the reasons set forth by the court in its July 29, 2024 Order denying the defendant's Motion to Suppress.

d. This search and seizure is not fruit of the poisonous tree.

IX. Subpoena for Bank Records

a. Tenn. Code Ann. § 40-17-123 is not unconstitutional.

As acknowledged by the defendant in his motion, "the Fourth Amendment does not prohibit the obtaining of information revealed to a third-party and conveyed by him to

Government authorities." *United States v. Miller*, 425 U.S. 435, 436 (1976). "Since no Fourth Amendment interests of the depositor are implicated here, this case is governed by the general rule that the issuance of a subpoena to a third-party to obtain the records of that party does not violate the rights of a defendant, even if a criminal prosecution is contemplated at the time of the subpoena is issued." *Id*. at 444. *Miller* has not been overturned and the opinion still carries precedential value.

Tenn Code Ann. § 40-17-123 authorizes the collection of information from third parties – a practice which does not run afoul of constitutional protections. Our supreme court has held that Tennessee's constitutional protections regarding searches and seizures are identical in intent and purpose to those in the federal constitution. *State v. Turner*, 297 S.W.3d 155, 165 (Tenn. 2009). In *Bunkall v. State*, a *post-Carpenter* opinion, the Court of Criminal Appeals considered whether the issue of what remedy exists for a defendant whose records were obtained in violation of the federal and Tennessee Financial Privacy Acts. The court held,

> Turning to the Petitioner's statutory argument regarding the privacy acts, in response to the holding in *Miller*, Congress enacted the Federal Right to Financial Privacy Act and Tennessee later enacted its state version. The Petitioner concedes that neither the federal nor state privacy "acts mandate[ ] suppression of evidence as a remedy for violating their mandatory requirements." The federal courts consistently hold that, in the criminal context, the damage remedy specified in 12 United States Code Annotated section 3417(a) is the exclusive remedy against the government and that a violation does not authorize a court to suppress or exclude evidence. See *United States v. Daccarette*, 6 F.3d 37, 52 (2d Cir. 1993); *United States v. Davis*, 953 F.2d 1482, 1496 (10th Cir. 1992); *United States v. Kington*, 801 F.2d 733, 737 (5th Cir. 1986); *United States v. Frazin*, 780 F.2d 1461, 1466 (9th Cir. 1986). **The same has been held in Tennessee, i.e., that our privacy act does not require evidence to be suppressed in the event of a violation**. *State v. Rickey Bradford*, No. M2012-02616-CCA-R3-CD, 2014 WL 2494548, at *15 (Tenn. Crim. App. May 30, 2014); *State v. James Michael Naive*, No. M2012-00893-CCA-R3-CD, 2013 WL 4505395, at *14 (Tenn. Crim. App. Aug. 21, 2013); *State v. M. Dale Lowe*, No. 89-92-III, 1990 WL 176722, at *9 (Tenn. Crim. App. Nov. 15, 1990).

Blunkall v. State, No. M2017-01038-CCA-R3-PC, 2019 WL 104136, at *31 (Tenn. Crim. App. Jan. 4, 2019) (emphasis added). As such, the defendant is not entitled to the relief he requests under the federal statutory scheme, the Tennessee statutory scheme, the federal constitution, or the Tennessee constitution.

b. The subpoena for production of records is not based on tainted probable cause for the reasons set forth by the court in its July 29, 2024 Order denying the defendant's Motion to Suppress.

c. This seizure for a third-party by means of subpoena is not fruit of the poisonous tree.

X. Search of the defendant's cellphone.

a. Police obtained a warrant before searching the defendant's cellphone. Def. Mot. Exhibit Z. Because the defendant's cellphone was seized by means of a search warrant and was searched incident to a search warrant, the Defendant bears the burden of overcoming the presumption of reasonableness of the search of his cellphone.

b. The warrant is not based on tainted probable cause for the reasons set forth by the court in its July 29, 2024 Order denying the defendant's Motion to Suppress.

c. This search is not fruit of the poisonous tree.

XI. Search of the defendant's Social Media Accounts

a. Police obtained a search warrant to obtain the defendant's social media account information. Def. Mot. Exhibit BB; Def. Mot. Exhibit DD. Because the defendant's social media account information was obtained by means of a search

warrant, the Defendant bears the burden of overcoming the presumption of reasonableness of the search of his social media accounts.

b. The search warrant is not based on tainted probable cause for the reasons set forth by the court in its July 29, 2024 Order denying the defendant's Motion to Suppress.

c. This search is not fruit of the poisonous tree.

WHEREFORE, PREMISE considered the court should deny the defendant's motion and ender an Order denying the defendant's Motion to Suppress the items discussed above.

Respectfully Submitted,

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