

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

**State of Tennessee**

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

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**INTRODUCTION**

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

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

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

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

Henry County, Tennessee General Sessions and Juvenile Court Judge

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

I was licensed to practice law in the State of Tennessee in 1988.

Tennessee Board of Professional Responsibility Bar Number 013081

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

Tennessee: Board of Professional Responsibility Bar Number 013081

Date of Licensure/Admission to Tennessee Bar: April 21, 1988

Current Status: Active

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

No.

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

My legal related work experience began in the summer of 1980 when I worked as a runner for the law firm of Farris, Hancock and Gilman in Memphis, Tennessee. In 1981, following my graduation from the University of Tennessee at Martin, I was hired by the Department of Human Services as a social worker for the Tipton County, Tennessee office. I was employed there until I entered law school at the Cecil C. Humphreys School of Law at the University of Memphis in the fall of 1983. I graduated early from law school in December 1985, after just two and a half years. Prior to and after obtaining my law degree, I worked as a Law Clerk for the Shelby County, Tennessee Criminal Court Judges from 1985 - 1986. I took a short break from that position in 1986 to give birth to my son.

I began working as an associate attorney at the William T. Looney Law Firm in Paris, Tennessee in 1988 and remained there until June 1990. From July 1, 1990 until June 30,

1996, I served as an Assistant District Attorney General for the 24<sup>th</sup> Judicial District. In that position I worked as an Assistant to District Attorney General, Gus Radford, and was assigned to the Criminal Division. I then worked as an Assistant District Public Defender for the 24<sup>th</sup> Judicial District from July 1, 1996 through May 15, 2006 as an Assistant to District Public Defender, Guy T. Wilkinson. Since May 14, 2006, I have had the privilege of serving as the Henry County, Tennessee General Sessions and Juvenile Court Judge.

Prior to my work in the legal community, I worked a variety of jobs as a teenager and young adult. While attending Henry County High School, I would regularly babysit children for families that my parents worked with, trusted and felt comfortable with me being alone in their homes with their children. My first job outside of babysitting was as a carhop at the local K&N restaurant. One summer I worked as a ward clerk at Henry County Medical Center transposing doctor's notes onto the nurse's files and assisting as they deemed appropriate. The summer I graduated from high school, I worked at Paris Landing State Park Inn as a clerk at the front desk. In the summer of 1977, after my freshman year of college, I was a lifeguard at Paris Landing State Park Inn pool. Throughout my college days at the University of Tennessee at Martin, I worked at Howard and Jobe, a lady's shop in downtown Paris, during each Christmas break. My responsibilities were to wrap presents, assist the customers and clean up at the end of the day. During the summer of 1979, I served as a Resident Assistant in one of the dormitories on campus while attending summer school to take a couple of advanced classes that were not offered during the regular semesters of my senior year. As outlined above, by the summer of 1980, I began working within the legal community where my focus has remained.

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.

While clerking for the Shelby County Criminal Court Judges from 1985 - 1986, my son was born on July 1, 1986. I stayed home a short while with him and then continued my clerkship until later that year. My husband and I decided that I would stay home with our son during his infancy. There was a period of time when I was not employed outside of the home. When I separated from my husband, my son and I moved back to the county where my family lived and still lives today. Thereafter, I started back to work outside the home to support us both.

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 Henry County General Sessions and Juvenile Court Judge I do not practice law. I was appointed to that position on May 15, 2006, elected to the position during the general election and sworn in on September 1, 2006. I was reelected in 2014 without opposition. I am the only General Sessions and Juvenile Court Judge in Henry County. It is my responsibility

to maintain dockets for civil, criminal, juvenile and child support courts. I also have mental health jurisdiction which requires me to attend hearings at our local hospital and behavioral health unit. I typically have a court docket every day of the week except the first Monday of each month and a couple of Fridays. I reserve those Fridays for child custody trials and termination of parental rights trials in juvenile court. In addition to the standard criminal court cases, I also regularly handle order of protection matters.

It is my responsibility to keep an updated docket for all courts, maintain demeanor in the courtroom, and address those persons who are unrepresented, as best I can, without becoming their advocate. Also, to instill a sense of integrity and dignity about the judicial system, when all about us there is a distrust of judges and the judicial system in general, and always be prompt and timely. That means that I start court on time and I expect attorneys to be in court on time as well. This sets the tone and attendees know that promptness and respect for the courtroom is not optional, it is expected.

As the Juvenile Court Judge, I have been privileged to receive a Safe Baby Court grant. The Safe Baby Court serves children and families, with the help of a coordinator and a team. The Henry County Court Appointed Special Advocates (CASA) Program was started in 2019. There are no words to describe how many children and families have been helped by our CASA volunteers and staff. I am a true believer in recovery courts. I am tasked with organizing and handling the truancy, delinquency and unruly matters as well. These cases involve specific issues which demand participation of experts in the fields of psychiatry, psychotherapy, medicine and education, among others. It takes a team to best serve these children so that their needs are met and they don't become adult offenders. It is my sincere desire to never see these same children reappear in an adult court. By grace, I have not seen many during my tenure.

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

As an associate attorney with William T. Looney, I was assigned collection cases, misdemeanor criminal cases, juvenile court cases and the responsibility to conduct title searches. I also performed any legal research that I was assigned, and I became particularly fond of this task. As my experience evolved and I became more adept and capable, I started taking on divorces in chancery court and some minor circuit court work.

In July of 1990, I was hired to serve as an Assistant District Attorney General for the 24<sup>th</sup> Judicial District which covers Benton, Carroll, Decatur, Hardin and Henry Counties. During my first year, I handled juvenile, general sessions and circuit courts for both Benton and Henry Counties. Thereafter, Henry County was my primary responsibility. Over the next six years, I served as chief counsel or co-counsel in over 15 murder cases, innumerable child sexual abuse, rape, burglary, theft, drug, prostitution, traffic, DUI, vehicular homicide and wildlife violation cases.

In July of 1996, I began working as an Assistant District Public Defender for the 24<sup>th</sup> Judicial District which covers the same counties. I was primarily responsible for Benton County but was assigned to cover other counties as the need arose. This allowed for experience with other assistant district attorneys, attorneys, clerks, law enforcement officers and judges. The experience was invaluable. I was appointed to represent people who qualified under the guidelines set forth by the Affidavit of Indigency from the Administrative Office of the Courts. One thing I learned early on is that spending sufficient time at the first meeting with my new client explaining my role, then listening to him or her, saved an enormous amount of time and confusion later in the case. Most people just want to be heard. Over the course of ten years, I traveled to counties outside the 24<sup>th</sup> Judicial District to represent appointed clients. I learned valuable lessons every time, in every case, from every judge. Above all, constitutional rights are afforded to everyone, not just the people who can afford them. During my tenure with the 24<sup>th</sup> Judicial District Attorney General and Public Defenders offices, I was counsel in over 200 jury trials. I believe that experience led me to where I am today.

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

Of note, was the case of *State v. Phipps*, 883 S.W.2d 138 (1994), heard by the Court of Criminal Appeals of Tennessee, at Jackson. I participated in the representation of the State at the trial and appellate level in this matter as an Assistant District Attorney General. In the appellate case, the defendant/appellant argued the theory that post-traumatic stress disorder precluded him from forming the requisite intent for first-degree murder. The trial court refused to give the jury an instruction to this effect, even though defense counsel requested it and prepared one for the court. During the trial, the District Attorney General consulted with me

decided not to object to the instruction requested by the defendant regarding diminished capacity. However, the trial court declined to instruct the jury as requested. The defendant was convicted of first-degree murder. Ultimately, the Court of Criminal Appeals reversed the trial court on this matter, finding that the “diminished capacity” evidence in the Phipps’ case, *i.e.* evidence of the accused’s mental state, is admissible as evidence to negate the elements of specific intent and the necessary *mens rea*.

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

I currently serve as the Henry County General Sessions and Juvenile Court Judge. The majority of my cases are set on the General Sessions Criminal Docket each Tuesday and Thursday. There are some days the criminal docket has over 200 matters set for hearing or arraignment. I handle all criminal matters originating in General Sessions Court. The General Sessions Civil Docket is typically scheduled for the second, third and fourth Monday of each month.

I attend to Mental Health Court issues, as needed, and when contacted by the physicians or social workers at Lakehaven Behavioral Health Center in Paris, Tennessee. For these matters, I travel to the hospital to conduct hearings. This process includes on-site file review, review of affidavits provided by medical professionals, interviews of staff and conducting hearings with the patient present.

Each Wednesday is designated for Juvenile Court matters. I handle delinquency and unruly matters, truancy cases, cases involving dependency and neglect (brought as private matters or by the Department of Children’s Services), child support hearings, child custody cases, termination of parental rights and any other type of legal matter or case involving a minor that falls within the jurisdiction of the Juvenile Court.

Fridays are reserved for trials or other matters that require extended motion hearings.

Safe Baby Court is scheduled every month with the Safe Baby Court team, who participate in, and outside of, the courtroom in these cases.

I cannot provide the specific number of cases I have heard over my 15 years on the bench with accuracy due to the fact that there is no repository for all general sessions judges. However, I have certainly heard thousands of cases during my tenure.

11. Describe generally any experience you have serving in a fiduciary capacity, such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

Not applicable. Since 1990, I have been an employee of the State of Tennessee as an Assistant District Attorney, Assistant Public Defender, or a Judge.

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

As provided in additional detail in Item Number 28, below, I have served, and continue to serve, on several committees which allow me to serve the Judiciary of the State of Tennessee. I am grateful for the opportunity to be able to serve through the Safe Baby Court in Henry County, which seeks to protect children and grant permanency to them in a more expeditious manner, while still recognizing the rights of parents. As a member of the Tennessee Council on Juvenile and Family Court Judges, as well as the General Sessions Conference, I have had the opportunity to present on a variety of topics at many conferences. Over the course of 15 years, I have attended approximately 45 state conferences, in addition to numerous national conferences and special topic seminars.

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

Not applicable. This is my first submission of an application for a judgeship.

### 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 attended the University of Tennessee at Martin from August 1976 through May 1980. I graduated with honors, earning a Bachelor of Science Degree in Criminal Justice and a minor in Sociology. I was a recipient of a voice scholarship through the Music Department, made the Dean's List, became a member of the Alpha Omicron Pi Sorority and served as the University Traffic Committee Student Representative (uncertain of the dates).

I attended the Cecil C. Humphreys School of Law from August 1983 through December 1985, and graduated with a Doctor of Jurisprudence. During law school, I participated in moot court competitions, winning champion counsel my first year and runner-up my second year. I also served as an Associate Justice on the Moot Court Board.

**PERSONAL INFORMATION**

15. State your age and date of birth.

63 years of age

Date of Birth: [REDACTED] 1958

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

I have lived in the State of Tennessee continuously for 63 years.

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

I have lived in Henry County, Tennessee continuously for 34 years, since September of 1987.

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

Henry County, Tennessee

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

Not applicable.

20. Have you ever pled guilty or been convicted or placed on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

No.

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No.



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

April 18, 2007 – I was advised by the BJC that an anonymous complaint filed against me had been summarily dismissed without a request for response from me.

July 28, 2008 – I was advised by the Board of Judicial Conduct (BJC) that a complaint filed against me had been summarily dismissed without a request for response from me.

December 31, 2008 – I was advised of a complaint filed against me with the BJC. This complaint was dismissed at a later date following my submission of a response.

December 10, 2014 – I received a letter stating that Jennifer Denise Robinson (formerly known as Jennifer Denise Cooley) filed a complaint with the BJC. The BJC requested I submit a response, which I did. The complaint was dismissed thereafter.

December 3, 2017 – I was advised that a complaint filed against me was dismissed by a BJC investigatory panel upon receipt and review of my response.

2018 – I received a letter that a complaint had been filed against me by an inmate. The BJC investigatory panel dismissed the complaint without a request for response from me.

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

No.

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

No.

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

*Vicki Shepherd Watkins v. Andrew Trotter Watkins*, In the Chancery Court for Henry County, Tennessee, Docket No. 13544 - Irreconcilable differences divorce action with the *Final Decree* entered June 9, 1988.

As an Assistant District Attorney General, there were a few lawsuits filed by litigants naming me as one of many defendants. I was summarily dismissed as a defendant in each instance. I do not recall specific dates or case names.

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.

Non-professional organizations to which I have belonged within the last five years include:

REAL Hope Youth Center - Founding Board Member – Past Board Member. This is an after-school enrichment program in Henry County for elementary school children;

Henry County Literacy Council - Board Member;

Plus Endowment - Past Board Member. This program was developed to award funding to individual teachers so they can create innovative learning experiences for their students;

Family Resource Center - Past Board Member. This is a free service offered by the Henry County School System with the purpose of being in partnership with community agencies, parents and businesses to help each child succeed in school;

Honorary Chairperson for the Salvation Army - 2008. Current supporter of the local projects;

Paris Henry County Kiwanis Club – Member. Awarded Kiwanian of the Year in 2009;

Sulphur Well Church of Christ – Member. Specific involvement has focused on working with the youth ministry; and

Henry County Chamber of Commerce - Member.

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.

As a child, I participated in scouting as a Brownie and Girl Scout.

In high school, I was inducted into the Beta Sigma Phi Sorority, which included girls only at the time.

In college, I was a member of the Alpha Omicron Pi Sorority, Tau Omicron Chapter, at the University of Tennessee at Martin, which involved only women at the time. I am now an alumni.

**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.

Professional organizations to which I have been a member within the last ten years include:

Henry County Bar Association since 1990. I served as President in the early 1990s;

Tennessee Bar Association. I am uncertain of the date I joined as a member, but I have been a member for the last ten years;

Member of the Tennessee Council of Juvenile and Family Court Judges for fifteen years. I have served as Treasurer, Vice-President and President. In addition, I am currently a member of the Executive Committee, having been a member for approximately eight years. I have also served as the Education Committee Chairman;

Member of the National Council of Juvenile and Family Court Judges for more than five years;

Member of the Tennessee General Sessions Judges Conference for fifteen years having served as an officer in different capacities and on various committees. I am currently serving on the Education Committee;

Board Member of the Tennessee Lawyer's Assistance Program Commission since 2020;

Member of the Anne Schneider Chapter of Lawyer's Association for Women for over five years;

Fellow of the Tennessee Bar Foundation since 2018;

Member of the Howell Edmunds Jackson Inns of Court since 2020;

Member of the Court Interpreter Grievance Committee for the Administrative Office of the Courts since 2019;

Member of the Supreme Court of Tennessee Indigent Representation Task Force. I was appointed in 2015. Our final report was presented to the Supreme Court on April 3, 2017;

On December 29, 2015, I was appointed to serve on the Domestic Violence State Coordinating Council. I represent West Tennessee as the judge from that Grand Division. I have served continuously since my appointment;

In July 2017, I was appointed to serve on the Joint Ad-Hoc Tennessee Blue Ribbon Task Force on Juvenile Justice. We met for six months before submitting our report in December 2017;

I served several years ago as a member of the Three Branches Institute of West Tennessee, representing the Judicial Branch of government. Our committee met for less than two years; and

I recently served as the only general sessions judge as a member of the Backlog Elimination Work Group under the direction of Chief Justice Roger Page. Our goal was to address the issues surrounding the backlog of cases created by the pandemic and discuss solutions to the different and varying problems facing rural, suburban and urban courts.

With regard to judicial training and experience of significance, I attended the following:

Tennessee Judicial Academy, held in Nashville, Tennessee, August 21-26, 2006;

National Judicial Institute on Domestic Violence Workshop: Enhancing Judicial Skills in Domestic Violence Cases (specifically addressing implicit bias), held in Nashville, Tennessee, May 4-7, 2008;

National Council of Juvenile and Family Court Judges Conference Core College: The Role of the Judge, held in Reno, Nevada, September 21-25, 2009; and

National Judicial Institute on Domestic Violence Workshop: Enhancing Judicial Skills in Domestic Violence Cases, held in Valencia, California, February 5-8, 2017.

I have attended National Council of Juvenile and Family Court Judges Conferences in Denver, Colorado; Washington, D.C.; and St. Louis, Missouri.

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 was awarded the McCain-Abernathy Memorial Award by the Tennessee Council of Juvenile and Family Court Judges on August 15, 2016. This award is bestowed on a Tennessee Juvenile Court Judge each year for outstanding service and dedication to the children of Tennessee.

On September 11, 2019, I was the first female General Sessions Court Judge to receive the Judge Leon Ruben Award from the Tennessee General Sessions Judges Conference. This award is given in recognition of outstanding service and devotion to the State of Tennessee in the pursuit of justice for all.

In April 2020, the Jackson Area Business and Professional Women named me a Sterling Award Winner as one of the 20 most influential women in West Tennessee.

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

**None**

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

I presented at the Intersection of Domestic Violence and Human Trafficking Seminar, held at the Tennessee Bureau of Investigation Headquarters in Nashville on January 25, 2019. I presented with Judge Angelita Blackshear Dalton and Judge Jeff Hollingsworth on the topic: Ethically Effective Judicial Leadership and Ethical Impediments to Judicial Responses to Human Trafficking Issues. We presented this same program at the General Sessions Judges Conference at a later date. Continuing education credits were offered at both seminars.

I also presented to the Attorneys of Legal Services of Tennessee. My topic pertained to appearing in front of a judge, preparation of cases, ethical behavior, and overall court preparedness. This presentation occurred within the past five years. CLE hours were available upon completion of the seminar.

I have presented several times at the General Sessions and Juvenile Court Judges Conferences in Tennessee over the last five years.

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

Henry County General Sessions and Juvenile Court Judge – Appointed May 15, 2006, elected and sworn in on September 1, 2006, and re-elected in 2014.

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

No.

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

The legal writing examples I have included with this Application are wholly a reflection of my personal effort and draftsmanship with the exception of the *State v. Patton* case included herewith to which I contributed approximately fifty percent of the work product filed.

**ESSAYS/PERSONAL STATEMENTS**

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

I have been a public servant for about 33 years. As a general sessions and juvenile court judge, I see and hear the cases of hundreds of people on a daily basis. It has been my great pleasure to serve in that capacity. However, I very much enjoy legal research, reading and writing. My skills in those areas have advanced and improved over the years. It is like putting together a very large and complicated puzzle. Sometimes I find myself lost in the process because it's so interesting. Unfortunately, my schedule allows very little time to do so. Analyzing a particular legal issue and applying the law to a set of facts, specific to that case, is what allows a judge to perform her duties as dictated by her oath. I take that oath seriously and the commitment I made when first elected. My desire is to serve the State of Tennessee and her citizens as a judge on the Court of Criminal Appeals. I will dedicate myself to this position as I have to the current position which I have humbly held for over 15 years.

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)*

When I was in the private practice of law, I served in a pro bono capacity as the need arose, or it became apparent someone was not capable of employing an attorney but could not be appointed counsel.

I have taken the opportunity to speak with churches, civic organizations, schools, youth groups, adult leadership groups, law enforcement and many other groups about the role the judiciary plays in our society. This is an effort to create an environment of trust and educate the public about the role of the judiciary.

I have presided over an Expungement Clinic in Henry County. It was organized by the District Attorney's Office and coordinated by the Administrative Office of the Courts with the Faith and Justice Alliance and other community partners. Chief Justice Roger Page attended as well. It was a huge success and children accompanying their parents were made to feel welcome and safe. Many people left the clinic with the opportunity to obtain a driver's license for the first time in many years. In addition, records were expunged, allowing for opportunities beyond imagination.

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

I am seeking the appointment to the Court of Criminal Appeals, Western Grand Division. The Court consists of twelve judges, four from each of the Grand Divisions of the State. The Court of Criminal Appeals hears appeals in post-conviction, felony and misdemeanor cases. They meet on a regular basis in Jackson, Nashville, and Knoxville. Periodically, other locations are selected for the Court to hear cases outside of those designated areas.

I have demonstrated a strong work ethic during my tenure as a practicing attorney and judge. I believe it is important to be timely, respectful, kind, efficient and to always exercise self-control. My relationship with staff, law enforcement, attorneys, bailiffs and the public is one of mutual respect. I like to say that "grace tempered with mercy" has a place in certain circumstances. However, respect for the institution and what it represents is expected from everyone in the courtroom.



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

I listed in Item Number 26 above, with specificity, the organizations that I enjoy serving in my community. I believe it is the responsibility of individual judges, and the judiciary as an entity, to educate the community about the role we take in our specific capacity, our daily responsibilities and address misconceptions as perpetuated by the media, television and movies. I enjoy speaking to groups to let them know about myself, my daily work, what *ex parte* means and why I cannot speak with them about a case at the grocery store, or why I cannot speak to them at all if they are a party to a case. Educating the public about our roles, responsibilities and oath can alleviate a great deal of confusion and fear surrounding the courtroom and proceedings.

It is my pleasure to go back to my alma mater, the University of Tennessee at Martin, and speak to a wildlife biology class on an annual basis. My purpose is to address the different branches of government, the different courts in Tennessee, how cases proceed, my role as a judge and how law enforcement should properly handle a case.

On occasion, elementary students will come to the juvenile courtroom when there is no court in session. This allows them an opportunity to see what a courtroom looks like and gives me a chance to speak with them about being respectful to their parents and teachers. They get to sit on the bench and bang the gavel, which is highlight for them.

It is customary for the eighth grade from one of our middle schools to have students observe General Sessions Court while in session. I have the students arrive early so I can speak with them about what they will see and hear that day. We discuss truancy, making good decisions, peer pressure and drugs.

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)

There are no lawyers in my family and I was the first child to attend college in my immediate family. My family were blue collar, hardworking people who provided a wonderful, safe and loving home for me and my brother. I was not gifted with athletic ability, but I was with an ear for music. Long practices with band and as a madrigal singer, demanded discipline and structure. I learned a good work and study ethic from my parents, who I am lucky enough to still have in my life at the ages of 83 and 82. That ethic still lives within me. My family consists of a son and two stepdaughters who are grown and now I am blessed with grandchildren. My husband and I enjoy work, church, and time with our family. But my priority is God. By putting Him first, everything falls into place. The idea of being quick to listen, slow to speak, and slow to anger has served me, and others, well for many years.

As I stated in an earlier response, I have tried to create an environment in the court which demands respect for all people. I am prompt to the bench, courteous to all people, move the docket along efficiently and give people the time to be heard. I have earned a reputation for being knowledgeable, yet humble enough that if I do not know an answer to a particular issue, I will get back to the parties promptly with an answer. I exercise self-control, even in the face of anger and explosive personality issues, which I am seeing more and more on a regular basis.

I feel that I have the experience, demeanor and leadership skills to serve as a colleague on the Court of Criminal Appeals.

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)*

As a trial judge, I took an oath to uphold the law when sworn into office in 2006 and 2014. I am particularly sensitive to the oath. It is critical that a judge apply the law, as written, to the facts of each particular case. It is not for me to decide the law is not fair, is too vague, or is poorly written. My personal opinions are of no consequence and are irrelevant. It becomes a very slippery slope when a trial judge begins to think that a law is unfair and that she can apply it in a different way or dismiss a case because she does not agree with the law as the General Assembly enacted it. I believe in the constitutions of Tennessee and the United States as they are written.

**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.

|  |
|--|
| <p>A. William C. Koch, Jr.<br/>President and Dean, Nashville School of Law<br/>Office Address: Nashville School of Law, [REDACTED] Nashville, Tennessee 37204<br/>Telephone: [REDACTED]</p>  |
| <p>B. Representative William Lamberth<br/>[REDACTED] Portland, Tennessee 37148<br/>Office Address: [REDACTED] Cordell Hull Building, Nashville, Tennessee 37243<br/>Telephone: [REDACTED]</p>  |
| <p>C. Randy Stephens<br/>Preacher, VanDyke Church of Christ, Paris, Tennessee<br/>Address: [REDACTED] Springville, Tennessee 38256<br/>Telephone: [REDACTED]</p>   |
| <p>D. Clint T. Davis<br/>President and Chief Operating Officer, Commercial Bank and Trust<br/>Company Office Address: [REDACTED] Paris, Tennessee 38242<br/>Home Address: [REDACTED] Paris, Tennessee 38242<br/>Telephone: [REDACTED]</p>              |
| <p>E. Norma Scott Gerrell, Ed.D., Ed.S., M.Ed., B.A.Ed.<br/>Director of Schools, Paris Special School District<br/>Office Address: [REDACTED] Paris, Tennessee 38242<br/>Home Address: [REDACTED] Paris, Tennessee 38242<br/>Telephone: [REDACTED]</p> |


**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 Criminal Appeals, Western District of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended application with the Administrative Office of the Courts for distribution to the Council members.

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

Dated: October 11, 2021

  
\_\_\_\_\_  
Vicki S. Snyder (Oct 11, 2021 08:10 CDT)  
Signature

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



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

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

**TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY**

**TENNESSEE BOARD OF JUDICIAL CONDUCT**

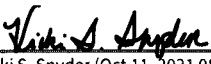
**AND OTHER LICENSING BOARDS**

**WAIVER OF CONFIDENTIALITY**

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

Vicki S. Snyder

\_\_\_\_\_  
Type or Print Name

  
\_\_\_\_\_  
Vicki S. Snyder (Oct 11, 2021 08:10 CDT)  
Signature

October 11, 2021  
\_\_\_\_\_  
Date

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BPR #

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








# Snyder Application - Final

Final Audit Report

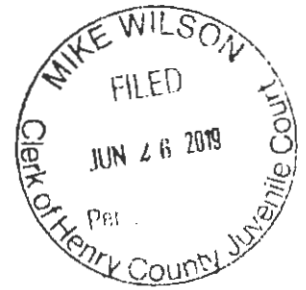
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| Created:        | 2021-10-11                                   |
| By:             | Joshua Bowden (Josh@neeselaw.net)            |
| Status:         | Signed                                       |
| Transaction ID: | CBJCHBCAABAawHQB13Bb7fPTa4Sb_SPIDFab6BqzfBqL |

## "Snyder Application - Final" History

-  Document created by Joshua Bowden (Josh@neeselaw.net)  
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-  Document emailed to Vicki S. Snyder (vsshcj@gmail.com) for signature  
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IN THE JUVENILE COURT OF HENRY COUNTY, TENNESSEE



STATE OF TENNESSEE )  
 DEPARTMENT OF CHILDREN'S SERVICES, )  
 )  
 ) Petitioner, )  
 )  
 vs. )  
 )  
 ) LATONYA PATTON and )  
 ) THOMAS SAWYERS )  
 )  
 ) Respondents. )

No. 40JC1-2018-JT6

In the matter of:

TREYMARION SAWYERS, DOB: 7-13-2010  
TREYQUARUIS SAWYERS, DOB: 7-19-2011

A Child Under 18 Years Of Age

**ORDER TERMINATING PARENTAL RIGHTS OF LATONYA PATTON AND THOMAS SAWYERS AND  
PLACING TREYMARION SAWYERS AND TREYQUARIUS SAWYERS IN THE FULL GUARDIANSHIP  
OF THE STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES**

This matter was heard on the Petition to Terminate Parental Rights on May 24, 2019, before the Honorable Vicki S. Snyder, Judge of the Juvenile Court of Henry County, Tennessee, at Paris. Based upon the statements of counsel, testimony given, the exhibits entered into evidence, and the record as a whole the Court finds as follows by clear and convincing evidence:

The parties present before the Court were: LaTonya Patton and Thomas Sawyers, parents of the minor children; Andy Clark, attorney for LaTonya Patton; Will Riggins, attorney for Thomas Sawyers; Ellen Neese Adams, Guardian ad Litem; Tess Rickman, DCS case manager; and Tiffany Evans and Candice Jones, attorneys for the Department.

At the time of the filing of the Petition there were no individuals registered with the Putative Father's Registry as potential fathers of the minor child and no fathers have come forth during the pending proceedings.



The Department has alleged that LaTonya Patton's parental rights should be terminated on the grounds of abandonment due to failure to provide a suitable home, substantial non-compliance with the permanency plans, and persistence of conditions. The Department has proven each ground alleged by clear and convincing evidence. The Department has alleged that Thomas Sawyer's parental rights should be terminated on the grounds of abandonment by incarcerated parent due to wanton disregard, substantial non-compliance with the permanency plans, persistence of conditions, and 10 year sentence when child is age 8 or younger. The Department dismissed the ground of 10 year sentence when child is age 8 or younger. The Department has proven by clear and convincing evidence the grounds of abandonment by incarcerated parent due to wanton disregard and substantial non-compliance with the permanency plans.

For the reasons set forth below, based upon clear and convincing evidence, the Court concludes that the Petition filed by the Department is well taken and should be sustained for the relief sought against the Respondents. Accordingly, the Court concludes that their parental rights to the child should be terminated and that such termination is in the child's best interest.

#### **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO THE RESPONDENTS**

##### **A. Findings of Fact**

As required by Tenn. Code Ann. §36-1-113(k), the Court makes the following findings of fact by clear and convincing evidence based on the testimony of Marty Weed, Angella Herson, LaTonya Patton, Thomas Sawyers, Tessa Rickman, Francine Owens, Deborah Hicks, and Patrese Woods; the exhibits presented during the trial of this cause; and the entire record. The following Exhibits were entered into evidence:

##### **1. Collective Exhibit 1:**

1. Birth Certificate of Treymarion Zontrez Sawyers
2. Birth Certificate of Treyquarius Monzez Romance Sawyers
3. Putative Father Registry response for Treymarion Zontrez Sawyers
4. Putative Father Registry response for Treyquarius Monzez Sawyers
5. Petition to Adjudicate Dependency and Neglect and Transfer Temporary Legal Custody filed on July 25, 2016
6. Amended Petition to Adjudicate Dependency and Neglect and Transfer Temporary Legal Custody and for Ex Parte Order filed on July 29, 2016
7. Protective Custody Order entered on July 29, 2016

8. Order entered August 29, 2016
  9. Notice of Filing filed August 24, 2016
  10. Order entered September 14, 2016
  11. Notice of Filing filed October 20, 2016
  12. Permanency Plan created on August 25, 2016
  13. Criteria and Procedures for Termination of Parental Rights signed by LaTonya Patton and Thomas Sawyers August 2016
  14. Order entered November 7, 2016
  15. Notice of Filing filed November 4, 2016
  16. Order entered November 28, 2016
  17. Permanency Plan created February 8, 2017
  18. Criteria and Procedures for Termination of Parental Rights signed by LaTonya Patton and Thomas Sawyers on February 8, 2017
  19. Notice of Filing filed February 15, 2017
  20. Order entered February 22, 2017
  21. Notice of Filing filed February 28, 2017
  22. Notice of Filing filed April 19, 2017
  23. Permanency Plan created May 16, 2017
  24. Criteria and Procedures for Termination of Parental Rights signed by LaTonya Patton on May 16, 2017
  25. Order entered May 22, 2017
  26. Notice of Filing filed May 16, 2017
  27. Adjudicatory Order entered June 6, 2017
  28. Permanency Plan created August 14, 2017
  29. Order entered October 18, 2017
  30. Notice of Filing filed October 18, 2017
  31. Criteria and Procedures for Termination of Parental Rights signed by LaTonya Patton on October 25, 2017
  32. Order entered December 1, 2017
  33. Permanency Plan created February 6, 2018
  34. Notice of Filing filed April 13, 2018
  35. Order entered July 6, 2018
  36. Permanency Plan created September 13, 2018
  37. Criteria and Procedures for Termination of Parental Rights signed by LaTonya Patton on September 13, 2018
  38. Notice of Filing filed October 17, 2018
  39. Notice of Filing filed December 3, 2018
  40. Order entered December 5, 2018
  41. Order entered on February 6, 2019
  42. Certified copy of Thomas E. Sawyers' criminal record – collective exhibit
  43. Certified copy of Latonya Patton's criminal record – collective exhibit
2. Exhibit 2—certificates of completion for Thomas Sawyers

The child, Treymarion Zontrez Sawyers, was born to LaTonya Renee Patton and Thomas Edward Sawyers in Paris, Henry County, Tennessee, on July 13, 2010. The child, Treyquarius Monzez Romance Sawyers, was born to LaTonya Renee Patton and Thomas E. Sawyers in McKenzie, Carroll County, Tennessee, on July 19, 2011. The children entered DCS custody on July 29, 2016.

At the time of the removal there were concerns of environmental neglect, physical abuse, and psychological abuse in the mother's home, and the children appeared underweight. Ms. Patton resided with her children, her mother, her sister, and her sister's 3 children in a two bedroom home. Mr. Sawyers was visiting with the children when he noticed significant bruising to their bodies. He did not have an appropriate home for the children at the time. DCS became involved, and the children entered DCS custody. Later it was determined the children have knowledge of sexual acts and/or pornography that reportedly occurred or was viewed in the home of Ms. Patton.

A permanency plan was developed for the family on August 25, 2016, which listed what the parents needed to do in order to regain custody of the children. The Respondents were to achieve the following desired outcomes: be mentally healthy and stable so they can parent their children appropriately; have residential stability in order to provide a safe and appropriate home for the children; and maintain structure and routine for the children. In order to do this they were to have a mental health assessment and follow all recommendations; demonstrate mental stability by making good decisions and parenting; attend parenting classes and complete the classes with documentation to support their completion; demonstrate the ability to parent the children starting in visitation; provide authorization to release information from providers to the Department in order to monitor services and progress; take random drug screens to ensure negative for drugs; follow recommendations from Center of Excellence; have safe and appropriate housing that will allow the children to have structure and a routine; and secure housing and maintain housing for 6 consecutive months while providing documentation that their rent/mortgage is paid in full along with utilities paid in full each month.

Thomas Sawyers participated in the development of the permanency plan, and signed the criteria for termination of parental rights on August 25, 2016. LaTonya Patton was provided

the plan and criteria for termination of parental rights on August 31, 2016. The plan was ratified by the Juvenile Court on October 26, 2016, as in the children's best interest, and the court found that the requirements for the Respondents were reasonably related to remedying the reasons for foster care. Since the children have been in DCS custody seven permanency plans have been developed for the family, and the requirements on the subsequent plans were substantially similar to those in the initial plan with the exception of adding to the permanency plan developed on February 8, 2017, that the parents participate in anger management counseling and provide proof of completion; utilize skills learned in anger management counseling; and Mr. Sawyers will keep the Department informed of all changes in phone number and/or address. DCS also added to the permanency plan developed on February 6, 2018, that Ms. Patton will remain engaged during visitation and not fall asleep or be preoccupied on her phone; and Ms. Patton will show ability to parent her children and address their needs for long periods of time, including during unsupervised visitation once recommended.

Marty Weed was the assigned family service worker from July 2016 to October 2016. He discussed with each parent the expectations for them on the permanency plans and attempted to assist them in completing those tasks. He offered and provided transportation to Ms. Patton to attend appointments to address her mental health and visitation with the children. She was also informed of public transportation through local resources. He offered assistance in obtaining suitable housing, but Ms. Patton declined the assistance. Ms. Patton did not provide proof of completing a mental health intake. Ms. Patton did not consistently visit the children and missed approximately a month of visitation with her children. Therapeutic supervised visitation was offered for visitation which also provided parenting training during the visits for Ms. Patton. She also missed IEP meetings for her children despite being invited.

Mr. Weed had difficulty maintaining contact with Mr. Sawyers because his contact information often changed. He did participate in a couple of visits with his child, but did not complete any other tasks on the permanency plan. Mr. Weed offered assistance to Mr. Sawyers to establish a home, but he was not able to locate him to actually implement the services. Fuel cards were offered to Mr. Sawyers to assist in transportation costs, but it was

difficult to ascertain an exact location to determine if it was warranted due to Mr. Sawyer's failure to provide DCS with his location. He was unable to recall if he assisted Mr. Sawyers in completing a TNCare application or if Mr. Sawyers did so. Mr. Sawyers did participate in a couple of visits with the children through therapeutic supervised visitation and one was a positive visit, but he was not consistent overall.

Angella Henson is a supervisor with the Department of Children's Services. Mr. Weed transferred the case to Jonathan Crawley in October 2016, and he had the case for approximately six months. She supervised both Mr. Weed and Mr. Crawley and is familiar with the case. In February 2017, Ms. Patton informed DCS she had stopped going to counseling in October 2016 because she did not like her counselor and planned to go to Carey Counseling for services, but had not made an appointment at that point. DCS provided therapeutic visitation services for the parents to assist in visitation and to teach Ms. Patton and Mr. Sawyers parenting skills. Neither parent reached a point where they were receiving unsupervised visitation with the children. The Department offered assistance to each parent including offering transportation, notifying them of public transportation, assistance in obtaining mental health services, and assistance in obtaining appropriate housing.

Tessa Rickman is the current case manager for the children. She has worked with the children and family since February 2018. Parenting and visitation are the primary issues that are being addressed through services. The children do have behaviors issues that the mother has not demonstrated an ability to control. She has provided transportation and assistance to Ms. Patton in obtaining necessary services. She has explained numerous times to Ms. Patton the necessary steps she must achieve in order to regain custody of her children. Mr. Sawyers has been incarcerated since she has been working with the children. She did meet with him at the prison and explained the permanency plan to him, but he refused to sign any paperwork she presented. She opined the children need structure with clear rules and expectation skills and a parent with strong parenting skills, and neither parent has demonstrated they can provide those skills.

Francine Owens is a licensed counselor and provides play therapy to each of the children. She testified as an expert witness in the field of counseling over the objection of Ms.

Patton's counsel of record. She continues to see Treymarion, but recently stopped seeing Treyquarious after exhibited sexual behavior towards her. She opined the children had a great deal of aggression mainly directed at authority figures and each other. Treyquarious displayed explosive behaviors, irritability, uncontrollable behaviors, and aggression. She has observed him kissing on a doll in the playroom at her office and "humping" it. Treymarion displayed defiant and aggressive behaviors and would kick and yell. He has described being hit with a back scratcher by his mother prior to coming into state custody. He has progressed farther than Treyquarious in therapy, although each child has progressed since beginning play therapy. In her expert opinion, the children are in need of continued counseling on a weekly basis and require a stable environment where there is empathy, consistency and constant supervision.

Deborah Hicks and Patrese Woods provide therapy to Treymarion and Treyquarious respectively. They also supervise visitations between the children and their mother, Ms. Patton. The boys have visited with their mother with the exception of approximately six weeks, from October 2018 to December 2018, where the mother agreed to forego visits due to recommendations by the children's counselors. Each counselor saw an improvement in the children's behavior when the visits were stopped. Upon Ms. Patton beginning to visit again, the negative behaviors began to increase. They have to intervene at times due to the aggression the children display towards their mother. They have had to prompt Ms. Patton to engage at times with the children and redirect her when she has attempted to discuss inappropriate topics with the children. They each testified that the children require continued counseling, structure, and consistency. The children are in separate foster homes due to their behaviors, but a plan has been developed to reunite them in one home and will be a slow process.

Due to the children's behaviors and Ms. Patton being unable to control the children at the same time, the children began to have visits with their mother apart from each other. That has been more beneficial for both the children and their mother. Ms. Patton has brought snacks and has played games with the children during the visitation, but the last hour she struggles and the children appear to be tired and uninterested in visiting. Ms. Patton is not allowed to bring her cellular phone to the visitations due to issues where she focused on her phone and did not enjoy quality time with the children. After unsuccessfully addressing the

issue several times with Ms. Patton, the supervisors of the visitation banned her bringing a cellular phone to prevent her focusing her attention elsewhere. She has also had to be redirected due to inappropriate conversations with the children such as telling the children that her new paramour is going to be their “new daddy”. Since her visitation resumed in January 2019, there have only been a couple of visits that the supervisors did not have to intervene.

Thomas Sawyers resided with the children’s kinship foster parents, the Bozeman’s, until his incarceration in May 2017, unbeknownst to DCS. According to Mr. Sawyers, it was hidden from DCS because he and the Bozeman’s knew he had not been approved to reside in their home. The Court finds if he had been in a stable residence as he now reports he was, he could have easily completed services and maintained contact with the Department. Despite knowing his children were in DCS custody, he committed crimes and was incarcerated for such in May of 2017. He was convicted of burglary and theft and remains incarcerated at this time. He has not provided any proof of completion of services, although he has completed some classes while incarcerated. The Court commends him on completing the classes, but finds they do not substantially comply with the requirements of the permanency plans. Mr. Sawyers will be eligible for parole in the next couple of months; however, it is unknown if he will be granted parole. Even if he were released today, he would not have a suitable home for the children.

LaTonya Patton stipulated the children were dependent and neglected due to lack of supervision and inappropriate discipline. She indicated she had been taking Treymarion to occupational therapy prior to the children coming into DCS custody, but at no time in the last 34 months has she relayed that to the Department and did not note it on the initial custody forms regarding their health status. There have been multiple issues with her supervised visitation, including her not demonstrating an ability to control the children, making inappropriate comments to the children such as her new paramour, Kevin Wilson, is their “new daddy”, and not following directions. This is of great concern to the Court. Despite the inappropriateness of the removal home, she remained in the removal home for over two years before obtaining housing elsewhere. Ms. Patton gave false testimony when she denied she was aware of where her mother is now living. Later in her testimony, she indicated she was trying to get her mother on the lease, and her mother stays in her home at times. She even listed her

mother as being a resident in April 2018 on paperwork completed by Youth Villages despite failing to report to DCS that she was in the home. The Court finds Ms. Patton's mother does live there, and it is concerning that she failed to report that information to the Department.

Treymarion and Treyquarious Sawyers are placed in separate foster homes. Each child has an Individual Educational Plan and special needs that require an active and consistent parent. The children receive and are recommended to continue receiving weekly counseling and bi-weekly play therapy. Treymarion has occupational therapy to address a deformity in his hand and receives speech therapy. Their medical needs are being met in DCS custody. Although the children are placed in separate homes, there is a plan to slowly attempt to reunite them in the same foster home.

The record is clear that parenting is the primary concern related to these children and has been since they were placed in DCS custody. The lack of residential stability is the next important concern for these children, and the physical structure of the home is not the only factor to consider when evaluating residential stability and a suitable home. There has been no improvement from either parent, and they have not even been able to receive unsupervised visits with their children after 34 months of the children being in DCS custody. The mother is residing in essentially the same situation and with the same people as she was when the children were removed. The father remains in a position where he cannot care for the children. Neither parent has completed mental health services.

The children have been in the custody of the Department for approximately 34 months and during that time the parents have made little to no efforts to change the conditions in their lives or homes to enable to allow the children to return to their home despite reasonable efforts from the Department to assist them to do so.

**B. Conclusions of Law**

Under Tennessee law, termination of parental rights must be based on a finding by the court and clear and convincing evidence that (1) the grounds for termination of parental rights have been established; and (2) termination of the parent's or guardian's rights is in the best interest of the child. T.C.A. §36-1-113(c).



Here, the Court concludes that there is clear and convincing evidence to support grounds for termination of the Respondents' parental rights under T.C.A. §36-1-113(g). In addition, the Court concludes, based on clear and convincing evidence that termination of Respondents' parental rights is in the child's best interest.

**1. Abandonment by Incarcerated Parent – Wanton Disregard**

Based on the facts set forth above and pursuant to T.C.A. § 36-1-113(g)(1), the Court concludes and finds that grounds for Termination of Parental Rights do exist as to Thomas Sawyers, by clear and convincing evidence, based on abandonment by an incarcerated parent as defined by T.C.A. §36-1-102. Mr. Sawyers has engaged in illegal behavior for the vast part of the children's lives based upon his testimony. After they came into DCS custody, he continued to commit crimes and is currently incarcerated for those behaviors.

**2. Abandonment-Failure to Provide a Suitable Home**

Based on the facts set forth above and pursuant to T.C.A. §36-1-113(g)(1), the Court concludes and finds that grounds for Termination of Parental Rights do exist as to LaTonya Patton, by clear and convincing evidence, based on abandonment by the parent or guardian for failure to provide a suitable home for the child as defined by T.C.A. §36-1-102. The children were removed from the home of LaTonya Patton and were found to be dependent and neglected by the Juvenile Court of Henry County Tennessee. The children were placed in the custody of the Department, and the Department made reasonable efforts to assist Ms. Patton in making her home suitable for the children; however, she failed to make any reasonable efforts to provide a suitable home for the children at an early date, and at the time of trial had not established a suitable home for the children as is more fully explained above.

**3. Substantial Non-Compliance with the Permanency Plan**

Based on the facts set forth above, the Court concludes and finds that grounds for Termination of Parental Rights do exist as to LaTonya Patton and Thomas Sawyers, by clear and convincing evidence, pursuant to T.C.A. §36-1-113(g)(2), based upon substantial noncompliance by Ms. Patton and Mr. Sawyers, with the statement of responsibilities in the permanency plans pursuant to the provision of title 37, chapter 2, part 4. The responsibilities set forth in the permanency plans devised for the children were reasonably related to remedying the

conditions which necessitated foster care. Neither Ms. Patton nor Mr. Sawyers demonstrated compliance with a single desired outcome or goal on the permanency plans. They each were aware of what was expected of them, and the goals have been essentially the same the entire time the children were in DCS custody. Mr. Sawyers did complete some classes since being incarcerated, but that does not equate to substantial compliance with the permanency plans. There is no record that Ms. Patton has complied with mental health counseling; she has not been able to demonstrate appropriate parenting skills through visitation; and she cannot engage fully with the children during a 3 hour visit.

### **3. Persistence of Conditions**

Based on the facts set forth above, the Court concludes and finds that grounds for Termination of Parental Rights do exist as to LaTonya Patton, by clear and convincing evidence, pursuant to T.C.A. §36-1-113(g)(3), because the children have been removed from the home of Ms. Patton by order of this Court for more than six (6) months and the conditions which led to the children's removal or other conditions which in all reasonable probability would cause the children to be subjected to further abuse or neglect and which, therefore, prevent the children's safe return to the care of the parents, still persist; and, there is little likelihood that these conditions will be remedied at an early date so that the children can be safely returned to the parents in the near future; and, the continuation of the parent and child relationship greatly diminishes the children's chances of early integration into a safe, stable and permanent home as is more fully described above.

### **4. Best Interest**

Under Tennessee law, the Court is required to find that termination of parental rights is in the children's best interest by clear and convincing evidence. T.C.A. §36-1-113(i)(1). Here, the Court concludes that termination as to Respondents' is in the children's best interest by clear and convincing evidence.

The Court, in addressing each factor separately, makes the additional following findings of fact as it relates to best interests:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;*

Ms. Patton did not move from the removal home until approximately two years after the children's removal and is in essentially in the same situation, as her mother is residing with her and her sister is next door. She has not demonstrated the ability to appropriately parent these children. Mr. Sawyers is incarcerated and his release date is unknown. This factor weighs in favor of termination of the Respondents' parental rights.

*(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;*

DCS has made reasonable efforts for the last 34 months to assist Ms. Patton and Mr. Sawyers in making a lasting adjustment, but the parents have failed to do so. Ms. Patton is in essentially the same living situation she was in at the time of removal; she has not complied with mental health services; and has not demonstrated the ability to properly care for and supervise the children. Prior to his incarceration, Mr. Sawyers did not make any lasting adjustment despite attempts to assist him. He had an opportunity to better himself, but instead committed a crime that led to his current incarceration. While he has taken some classes at the prison, it does not result in a lasting adjustment. This factor weighs in favor of termination of the Respondents' parental rights.

*(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;*

Ms. Patton has attempted to visit regularly to the best of her ability. Mr. Sawyers is currently incarcerated, but prior to his incarceration only took advantage of a couple of visits. This factor weighs in favor of termination of Mr. Sawyer's parental rights and against termination of Ms. Patton's parental rights.

*(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;*

Ms. Patton does have a meaningful relationship with the children. Mr. Sawyers has not seen his children in over two years and does not have a meaningful relationship with them. This factor weighs in favor of termination of Mr. Sawyer's parental rights and against termination of Ms. Patton's parental rights.

*(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;*

A change in caregivers would be detrimental to the children. Based upon the testimony, the children's best behavior in the last 34 months came during the six weeks they did not have visitation with either parent in October 2018. This factor weighs in favor of termination of the Respondents' parental rights.

*(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;*

The children experienced physical abuse in the home of the mother and exposure to inappropriate sexual activities and material. This factor weighs in favor of termination of Ms. Patton's parental rights and against termination of Mr. Sawyer's parental rights.

*(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;*

Neither parent has established a healthy and safe home for the children as more fully explained above. This factor weighs in favor of termination of both Respondents' parental rights.

*(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or*

Neither parent has complied with mental health services. This factor weighs in favor of termination of both Respondents' parental rights.

*(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.*

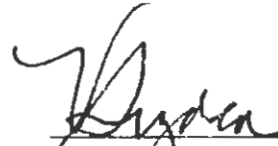
This item is not applicable as neither parent has been ordered to pay child support.

**IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:**

1. That there is clear and convincing evidence that grounds for termination of parental rights exist, as more clearly described above and that there is clear and convincing evidence that it is in the best interests of the children that all parental rights be terminated and the children freed for adoption, based on the testimony as described above.
2. Therefore, all parental rights which the Respondents have to the children, Treymarion Sawyers and Treyquarious Sawyers, are finally and fully terminated and the complete

custody, control, and guardianship of the children is awarded to the State of Tennessee, Department of Children's Services, with the right to place said children for adoption and to consent to such adoption in loco parentis.

Entered, this the 26 day of June, 2019.

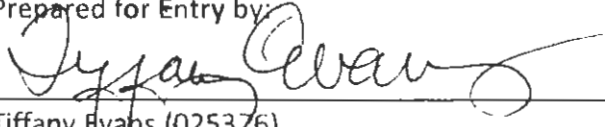
  
\_\_\_\_\_  
Judge Vicki S. Snyder

In accordance with Tenn. R. Civ. P. 54.02, as applicable through Tenn. R. Juv. P. 1(d), this is a final order as to the Respondents, LaTonya Patton and Thomas Sawyers, and any appeal from this order must be made to the Court of Appeals within thirty days of the entry of this order.

Tennessee law requires that any parent wishing to appeal an order termination of parental rights must sign the notice of appeal form. Tenn. Code Ann. § 36-1-124(d). If a parent fails to comply with this requirement, the appeal may be dismissed.

Any appeal of the trial court's final disposition of the complaint or petition for termination of parental rights will be governed by the provisions of Rule 8A, Tennessee Rules of Appellate Procedure, which imposes special time limitations for the filing of a transcript or statement of the evidence, the completion and transmission of the record on appeal, and the filing of briefs in the appellate court, as well as other special provisions for expediting the appeal. All parties must review Rule 8A, Tennessee Rules of Appellate Procedure, for information concerning the special provisions that apply to any appeal of this case.

Prepared for Entry by:

  
\_\_\_\_\_  
Tiffany Evans (025376)  
Assistant General Counsel  
State of Tennessee, Department of Children's Services  
8600 Highway 22  
Dresden, TN 38225  
(731) 364-9647

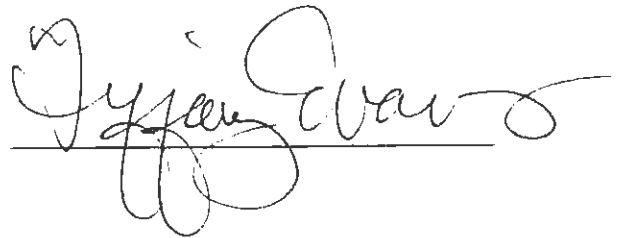
CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of June, 2019, I served a true and exact copy of this Order via US mail, postage prepaid, to the following:

Andy Clark  
Attorney for Ms. Patton  
104 N. Brewer Street  
Paris, TN 38242

Ellen Neese Adams  
Guardian ad Litem  
314 North Market Street  
Paris, TN 38242

Will Riggins  
Attorney for Mr. Sawyers  
1340 Donelson Pkwy  
Dover, TN 37058-3757

A handwritten signature in black ink, appearing to read "Tessa Rickman", written over a horizontal line. The signature is cursive and stylized.

cc: Tessa Rickman, DCS FSW

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

LON ADELBERT PIERCE

Petitioner

VS.

BENTON CRIMINAL  
W2003-02384-CCA-R3-PC

STATE OF TENNESSEE

ON APPEAL AS OF RIGHT FROM THE JUDGMENT OF THE  
BENTON COUNTY CRIMINAL COURT

---

**BRIEF OF THE APPELLANT**

---

Vicki S. Snyder  
Assistant District Public Defender  
24<sup>th</sup> Judicial District  
117 N. Forrest Avenue  
Camden, Tennessee 38320  
(731) 584-3384

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| a.    Counsel failed to subpoena witnesses that would have established heat of passion (element of the lesser-included offense of voluntary manslaughter)  |       |
| b.    Counsel failed to file a Tennessee Rules of Appellate Procedure Rule 11 Application to the Tennessee Supreme Court, even though the Petitioner requested all appeals to be made in this case. (This issue has already been decided by the Tennessee Supreme Court by an order dated September 2, 2003. |       |
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### **ISSUES PRESENTED FOR REVIEW**

1. Counsel failed to subpoena witnesses that would have established heat of passion (element of the lesser-included offense of voluntary manslaughter).
2. Counsel failed to file a Tennessee Rules of Appellate Procedure Rule 11 Application to the Tennessee Supreme Court, even though the Petitioner requested all appeals be made in this case. (This issue has already been decided by the Tennessee Supreme Court by an order dated September 2, 2003. Attached as Exhibit "1").
3. Counsel failed to provide a copy of the transcript in this cause to the petitioner, as requested by the petitioner.

## STATEMENT OF THE CASE

The defendant, Lon Adelbert Pierce, was indicted on June 2, 1997, on one count of First Degree Murder.

The defendant was tried before a jury on February 10-11, 1999, and the Judge declared a mistrial.

The defendant filed a Motion to Dismiss on the grounds of double jeopardy and the violation of his state and federal constitutional rights which was overruled.

The defendant requested a TRAP 9 Motion which was denied.

The defendant filed a TRAP 10 Appeal which the Court of Appeals denied.

The defendant re-filed a Motion to Dismiss and same was denied.

The defendant was re-tried before a jury on April 26 and 27, 1999, and was found guilty by the jury of First Degree Murder.

The defendant was given a life sentence on the conviction of First Degree Murder.

The defendant filed a motion for a new trial on June 2, 1999. An order overruling the motion for new trial was entered on July 20, 1999. Final judgment was entered on July 20, 1999. A notice of appeal was filed July 26, 1999.

On the 23<sup>rd</sup> day of October, 2000, the Tennessee Court of Criminal Appeals, at Jackson, filed an opinion with the Clerk affirming the judgment of the trial court. (Attached a copy as Exhibit "2").

On November 4, 2002, the Petitioner filed a pro se petition for post conviction relief. An amended petition was filed by counsel on December 18, 2002.

On February 12, 2003, a hearing was held on the petition for post conviction relief before the Honorable C. Creed McGinley, Circuit Judge for Benton County, Tennessee.

On March 7, 2003, the Court filed an Order Granting Delayed Appeal pursuant to Rule 28, Sec.(D) Tennessee Supreme Court. (Attached a copy as "Exhibit 2").

On September 2, 2003, the Tennessee Supreme Court denied the Petitioner's Rule 11 Application to Appeal.

On September 22, 2003, the trial court dismissed the Petitioner's Post Conviction Relief Petition.

On September 22, 2003, the Petitioner filed an appeal, to the Tennessee Court of Criminal Appeals, of the trial court's finding of September 22, 2003.

## STATEMENT OF THE FACTS

At the hearing on the Petition for Post-Conviction Relief, and the Amended Post-Conviction Relief, the Petitioner testified that he was represented at trial by Mr. Terry Leonard. (TPPCR Page 6) and that he was convicted on April 27, 1999. He further testified that Mr. Leonard did not inform of his failure to file an appeal to the Tennessee Supreme Court (TPPCR Page 8, 9 and 10).

The Petitioner testified to the Court that he gave Mr. Leonard information regarding where witnesses to the actual shooting could be found, and that they needed investigating. (TPPCR Pages 12, 13 and 14). He stated that Mr. Leonard failed to locate these witnesses and therefore, there were no independent witnesses at trial to establish heat of passion. (TPPCR Pages 12, 13, 14). Mr. Leonard only spoke a couple of times with the Petitioner to go over his case and prepare for trial. (TPPCR Pages 14, 15). The Petitioner testified that he was not informed by Mr. Leonard about the process from the trial to the appeal. (TPPCR Pages 14, 15). Further, the Petitioner requested that Mr. Leonard send him a copy of the transcript from the trial in which he was convicted; and that he did not receive a copy as requested from Mr. Leonard. (TPPCR Pages 15, 16). He stated in testimony that Mr. Leonard was not an effective attorney, and did not represent him well, and he demanded a new trial. (TPPCR Pages 17, 18).

At the Post-Conviction Petition hearing, Mr. Leonard testified that the Petitioner suffered from diminished capacity at the time of the offense. (TPPCR Page 31). He also stated that, prior to the first trial (mistrial) he became aware that the Petitioner was borderline mentally retarded. (TPPCR Page 31). He testified that the Petitioner had difficulty communicating by reading or

writing. (TPPCR Page 32), but that the Petitioner could assist counsel (TPPCR Page 32). He further stated that even after the conviction and the Petitioner had just “given up”, counsel did not feel it was incumbent upon him to follow through with the appeal process. (TPPCR Pages 32, 33, 34 and 35).

## ARGUMENT

1. Whether the trial court erred in dismissing appellant's post-conviction petition upon the grounds of ineffective assistance of trial counsel.

The defendant testified that Mr. Leonard failed to investigate his case, failed to spend sufficient time advising the defendant, failed to effectively communicate in writing and orally with the defendant and failed to properly prepare paperwork in this cause. (TPCH Pages 6, 8-10, 12-18, 31-35).

The court in Denton v. State, 945 S.W. 2d 793 (Tenn. Crim. App. 1996) stated that:

(1) Providing failure of the adversarial process because of ineffective assistance of counsel requires the defendant to satisfy, by a preponderance of the evidence both prongs of a two-pronged test. See Butler, supra at 899. First, the defendant must prove that counsel's performance was deficient in that it failed to meet the threshold of competence demanded of attorneys in criminal cases. Butler, supra at 899. Second, the defendant must prove actual prejudice resulting from the deficient performances. Cooper, supra at 747 (citing Strickland, supra at 687, 104 S. Ct. at 2064). Actual prejudice is established by demonstrating that, but for his counsel's deficient performance, the results of his trial would have been different and, thus, the adversarial process failed to produce a reliable result. Best v. State, 708 S.W. 2d 421, 422 (Tenn. Crim. App. 1985).

(2,3) In post-conviction proceedings, the defendant has the burden of proving the claim raised in the petition by a preponderance of the evidence. Wade v. State, 914 S.W. 2d 97, 101 (Tenn. Crim. App. 1995); Braton v. State, 477 S.W. 2d 754 (Tenn. Crim. App. 1971).

Specifically, the appellant herein has the burden of showing that there is a reasonable probability that but for counsel's error the result of the proceeding would have been different. Best v. State, supra.

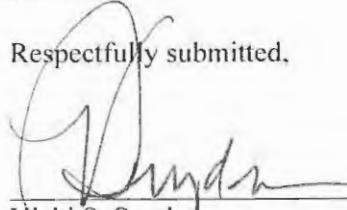
The defendant contends that had trial counsel properly informed him and communicated with him regarding the trial and appeal process, then he would have understood what was happening. Petitioner is borderline mentally retarded and had great difficulty in assisting Mr. Leonard. (TPPCR Pages 31-35). Further, defendant contends that if trial counsel had investigated the case, as any competent attorney would, and properly communicated with the defendant, then the witnesses would have been put forth to establish "heat of passion". (TPPCR Pages 12-17).



**CONCLUSION**

For the reasons stated herein, the defendant respectfully requests that the judgment of the trial court be reversed and dismissed, or reversed and remanded.

Respectfully submitted,

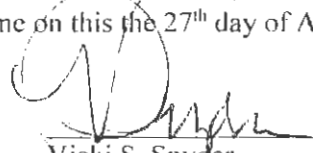


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Assistant District Public Defender  
24<sup>th</sup> Judicial District  
117 North Forrest Avenue  
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**CERTIFICATE OF SERVICE**

I, Vicki S. Snyder, do hereby certify that I have furnished a copy of the foregoing brief to the Court of Criminal Appeals, and to the Honorable Paul G. Summers, Attorney General, State of Tennessee, by mailing a true and exact copy of same on this the 27<sup>th</sup> day of April, 2004.



---

Vicki S. Snyder  
Assistant District Public Defender  
24<sup>th</sup> Judicial District

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

|                      |   |                                |
|----------------------|---|--------------------------------|
| STATE OF TENNESSEE   | ) |                                |
|                      | ) |                                |
| Appellee             | ) |                                |
|                      | ) |                                |
| Vs.                  | ) | HARDIN CRIMINAL                |
|                      | ) | C.C.A. No. 02C01-9708-CC-00327 |
|                      | ) |                                |
| LLOYD EUGENE FERRELL | ) |                                |
|                      | ) |                                |
| Appellant            | ) |                                |

ON APPEAL AS OF RIGHT FROM THE JUDGMENT OF THE  
HARDIN COUNTY CRIMINAL COURT

---

BRIEF OF THE APPELLANT

---

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| 5. The Court erred in overruling Defendant's request to admit the entire recorded statement made by Defendant Debra Ferrell to Jason W. Kimberland after the State was allowed to play certain recordings for the jury. . . . .  | 35-36 |

- 6. The prosecution made improper and inflammatory remarks in closing argument, to wit:
  - (a) By stating to the jury that they, "like a doctor should remove all of the cancer" by convicting Debra Ferrell and Lloyd Ferrell.
  - (b) By suggesting that Lloyd Ferrell was attempting to or contemplating the murder of Stacey Shands, of which there was no evidence presented in trial. . . . . 36-37
- 7. The Court erred in meeting with a juror, during the course of the trial, and ruling to dismiss the juror, after the close of proof, outside the presence of defense counsel for Defendant Lloyd Ferrell. . . 37-38

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ISSUES PRESENTED FOR REVIEW

1. The evidence was insufficient to justify a rational trier of fact from finding guilt beyond a reasonable doubt in that there was insufficient evidence that the Defendant had the requisite intent to commit first degree murder.

2. The Court erred in overruling the Defendant's Motion for Judgement of Acquittal due to insufficiency of evidence.

3. The Court erred in overruling the Defendant's Motion for Severance from Co-Defendant Debra Ferrell. The statements by Debra Ferrell were prejudicial to Defendant Lloyd Ferrell and Debra Ferrell was not available for cross-examination by counsel for Defendant Lloyd Ferrell.

4. The Court erred in allowing into evidence the statements of Co-Defendant Debra Ferrell, made to Stacey Shands over objection of the Defendant, Lloyd Ferrell.

5. The Court erred in overruling Defendant's request to admit the entire recorded statement made by Defendant Debra Ferrell to Jason W. Kimberland, after the State was allowed to play certain recordings for the jury.

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in closing argument, to wit:

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2. By suggesting that Lloyd Ferrell was attempting to or contemplating the murder of Stacey Shands, of which there was no evidence presented in trial.

1

7. The Court erred in meeting with a juror, during the course of the trial, and ruling to dismiss the juror, after the close of proof, outside the presence of defense counsel for Defendant Lloyd Ferrell.

STATEMENT OF THE CASE

The defendant, Lloyd Eugene Ferrell, was indicted on July 22, 1996, by the Hardin County Grand Jury of one count of first degree murder and one count of criminal conspiracy to commit aggravated robbery.

On October 10, 1996, the court heard in pre-trial motions the defendant Lloyd Ferrell's motion to sever his trial from the trial of defendant Debra Ferrell, which was overruled.

On December 9, 1996, defendant Lloyd Ferrell's motion to sever was renewed and was again overruled.

The defendant was tried before a jury on December 9-11, 1996, and was found guilty by the jury of one count of first degree murder during the perpetration of a robbery.

On January 14, 1997, the defendant was given a sentence of life imprisonment for the first degree murder conviction and the State subsequently dismissed the second count of the indictment, which was criminal conspiracy to commit aggravated robbery, stating that the second count merged into the first count.

The defendant's motion for a new trial was heard and overruled on March 31, 1997. A notice of appeal was filed and the defendant now stands before this Honorable Court.

## STATEMENT OF THE FACTS

On March 27, 1996, at approximately 6:30 a.m., the Hardin County jail received a direct and untraceable call from an unidentified woman who reported that someone was in her backyard hiding behind a tree. (T.E. Volume I, Page 11, Line 22; T.E. Volume I, Page 12, Lines 9-10; T.E. Volume I, Page 12, Line 25; T.E. Volume I, Page 13, Lines 22-23; T.E. Volume I, Page 14, Line 20). The jailer overheard the woman screaming, "He's coming in! He's coming in! He's coming in!" (Emphasis added). Subsequently, the jailer heard shots being fired and groaning on the phone. (T.E. Volume I, Page 13, Lines 15-19). Sometime after 6:53 a.m., Deputy Alexander picked up the telephone at the site of the shooting, identified himself and notified the jailer that someone had been shot at the scene. (T.E. Volume I, Page 14, Lines 13-15; T.E. Volume I, Page 28, Line 14).

Deputy Alexander received notification of a shooting from Central Dispatch sending him to 11800 Highway 64 East. (T.E. Volume I, Page 27, Line 24; T.E. Volume I, Page 28, Line 5). Upon Deputy Alexander's arrival at the residence, he encountered an elderly woman who was hysterical and standing in the road. (T.E. Volume I, Page 28, Lines 17-18). The hysterical condition of this woman, later identified as Mary Ferrell, the wife of the deceased Hobert Ferrell, was such that she was transported by squad car to the Hardin County Emergency Room by Investigator Davidson. (T.E. Volume II, Page 216, Lines 22-25; T.E. Volume II, Page 219, Lines

10-17).

Upon entry into the home, the deputy discovered the victim lying face down on his side and a shotgun laying beside him. The victim's name was Hobert Ferrell. (T.E. Volume I, Page 31, Lines 4-6; T.E. Volume I, Page 32, Line 10). After determining that Mr. Ferrell had no pulse, the officer exited the scene and secured same until the sheriff arrived. (T.E. Volume I, Page 34, Lines 1-3).

A call was received concerning a suspicious person wearing a ski mask in the vicinity of the residence at 7:02 a.m., and a search of a wooded area across the road from the house was conducted which resulted in no suspect being found. (T.E. Volume I, Page 36, Lines 8-10; T.E. Volume I, Page 39, Lines 16-19; T.E. Volume I, Page 40, Line 25). At 7:27 a.m., Sheriff Sammy Davidson arrived at the scene. Already present were Inspector Andrea Davidson and Officers Patterson and Alexander. (T.E. Volume I, Page 44, Lines 16-18). Sheriff Davidson notified the Assistant District Attorney and the TBI field agent. (T.E. Volume I, Page 46, Lines 9-11). The sheriff testified that at the time of his arrival, the crime scene had not been disturbed. (T.E. Volume I, Page 46, Lines 22-24).

At 7:52 a.m., a second call was received about a suspicious person wearing a ski mask, and within five to six minutes, an

individual wearing a ski mask and dark clothing was pursued and apprehended by Officer Fielder. (T.E. Volume I, Page 36, Lines 10-13); T.E. Volume I, Page 41, Line 9; T.E. Volume I, Page 48, Lines 11-12). Upon apprehension, the individual made the statement that he was sorry for what he had done and "You ought to go ahead and kill me". (T.E. Volume II, Page 189, Lines 10-12). Thereupon, the ski mask was removed and the individual therein was identified as Jason Kimberland. (T.E. Volume I, Page 37, Line 9; T.E. Volume I, Page 49, Line 4; T.E. Volume II, Page 189, Line 16). The site of Jason Kimberland's arrest was searched at the time but nothing was recovered. (T.E. Volume I, Page 37, Lines 14-21). A later investigation of the same site resulted in the discovery of duct tape, paper towels and camouflaged pants. (T.E. Volume II, Page 284, Lines 2-8). Further along the creek bank where the arrest occurred, during the later search, there was a weapon found, a .380 Jennings semi-automatic pistol. (T.E. Volume II, Page 284, Lines 10-16). At the same time of its discovery, the .380 Jennings semi-automatic pistol contained seven live rounds in the magazine and not one in the chamber. (T.E. Volume II, Page 284, Lines 22-24).

At the time of the arrest of Jason Kimberland, however, no other person was found at the site of the arrest. (T.E. Volume I, Page 42, Lines 6-10). Thereafter, Jason Kimberland was transported to the Ferrell's residence on Highway 64, and advised

of his rights. (T.E. Volume II, Page 189, Lines 21-23). The suspect, Jason Kimberland, gave a statement at approximately 8:10 a.m. at the residence of Highway 64 East. (T.E. Volume II, Page 189, Lines 22-25; T.E. Volume II, Page 190, Lines 1-11). Kimberland was then transported to the Hardin County Jail. (T.E. Volume I, Page 52, Lines 16-18; T.E. Volume II, Page 190, Lines 13-15). Inspector Fielder went to the jail to re-interview the suspect and at approximately 9:07 a.m. read Jason Kimberland his rights and suggested to the suspect that he needed to come clean about the events of the morning. (T.E. Volume II, Page 190, Lines 17-20). Another statement was given by Jason Kimberland inconsistent with his first statement. (T.E. Volume II, Page 191, Lines 7-8). Thereafter, Jason Kimberland was held in jail, with instructions from Inspector Fielder that the suspect was not to have any visitors or to make any phone calls until such time as the law enforcement personnel talked to him again. (Emphasis added) (T.E. Volume II, Page 191, Lines 15-17). Agent Carpenter of the Tennessee Bureau of Investigation, a special agent thereto, first interviewed Jason Kimberland at 5:20 p.m. at the Hardin County Sheriff's Department. (T.E. Volume II, Page 285, Lines 10-12). During that interview, the only person Jason Kimberland identified is Lloyd Ferrell. (T.E. Volume II, Page 310, Lines 10-11). Jason Kimberland's statement was that after

he was arrested, he talked to no one, except for Mike Fielder and the Sheriff. (T.E. Volume I, Page 115, Lines 4-19). Jason Kimberland, a 22-year old high school graduate (T.E. Volume I, Page 125, Lines 1-5) gave a full confession before his attorney, Ron Harmon, came into the case. (T.E. Volume IV, Page 474, Lines 12-13). On March 27, 1996, Jason Kimberland ingested narcotics and was in a drug-induced state of intoxication at the time his statements were made and at the time of the crime. (T.E. Volume I, Page 134, Lines 14-23). He was unable to remember whether he was in the car, the jail, the courthouse or at the scene when he gave his statements. (T.E. Volume I, Page 135, Lines 1-10). Mr. Kimberland's statement consisted in part of stating that Lloyd Ferrell made an offer of "easy money" to Mr. Kimberland by robbing an old man

and old woman. This statement was made within visual range, but out of the earshot of two other individuals: Stayce Shands who is Mr. Kimberland's girlfriend and Debra Ferrell, Lloyd Ferrell's wife, but in privity to Mr. Kimberland. (T.E. Volume I, Page 82, Lines 1-10; T.E. Volume I, Page 83, Lines 7-17). The only knowledge that Stayce Shands has concerning this offer is what Jason Kimberland tells her on the way back to their apartment the same day. (T.E. Volume I, Page 85, Lines 3-19; T.E. Volume I, Page 86, Lines 1-9). Mr. Kimberland states that on March 26,



1996, he visits Lloyd Ferrell again and in a garage the two of them once more discuss the "easy money" and its acquisition. (T.E. Volume I, Page 88, Lines 5-25). The next meeting that Jason Kimberland has with Lloyd Ferrell is late that same evening of March 26, 1996. (T.E. Volume I, Page 91, Line 7). Again, the meeting involves only Jason Kimberland and Lloyd Ferrell. (T.E. Volume I, Page 91, Lines 21-24). And again, the intended result of each meeting hereto with Lloyd Ferrell was Jason Kimberland's acquisition of illicit drugs. (T.E. Volume I, Page 82, Line 15; T.E. Volume I, Page 88, Line 5; T.E. Volume I, Page 92, Lines 23-24). Kimberland states that Lloyd Ferrell drives him to Highway 64 and points out the residence of Hobert and Mary Ferrell. (T.E. Volume I, Page 94, Lines 7-8). Kimberland further indicates that Ferrell would drop Kimberland off at the road, that Kimberland would run up the hill alone and he would hide and wait until the folks inside got up. (T.E. Volume I, Page 95, Lines 5-13). Kimberland further states that Ferrell instructed him to get to the back door and kick the back door in. (T.E. Volume I, Page 95, Line 21). Thereafter, Kimberland indicates Ferrell instructed him to tape them (Hobert and Mary Ferrell) and make them tell where their money was by using the gun to scare the elder Ferrells. (T.E. Volume I, Page 96, Lines 1-4). Kimberland's statement is that Ferrell would supply him (Kimberland) with an unregistered

.380 the next morning, March 27, 1996. (T.E. Volume I, Page 96, Lines 16-22). The rest of the plan was that Kimberland would hide at a pre-determined location and wait for Ferrell to pick him up; this after notifying Ferrell by phone from the home of Hobert and Mary Ferrell after the crime was completed. (T.E. Volume I, Page 97, Lines 1-12). Further, in Kimberland's statement is that Lloyd Ferrell would pick up Kimberland between 4:30 a.m. and 5:00 a.m. on the morning of March 27, 1996 to transport Kimberland to the site of the robbery. (T.E. Volume I, Page 98, Lines 2-3). Mr. Kimberland proceeds to testify that he called to Lloyd Ferrell's house on the morning of March 27, 1996, to advise Ferrell that there was no need to bring a ski mask; but Lloyd had already left and Jason spoke to Debbie Ferrell, Lloyd Ferrell's wife. The gist of the short conversation was that Lloyd had already left with a gun and ski mask. (T.E. Volume I, Page 100, Lines 3-15). According to Jason's statement herein, Lloyd Ferrell arrived at the apartment complex, picked him up in a green Buick LeSabre, handed Jason a gun and a ski mask (the ski mask which Jason doesn't need as he has his own) and drove through town to the Dodge Store. (T.E. Volume I, Page 100, Lines 16-19; T.E. Volume I, Page 101, Line 5; T.E. Volume I, Page 101, Lines 14-19). Jason further states that he ran into Paul Weirich at the Dodge Store and spoke with him briefly. (T.E. Volume I, Page 102, Lines 4-15). Kimberland states that Ferrell drove him out to the

house on Highway 64 and left Kimberland there. (T.E. Volume I, Page 102, Lines 18-19, T.E. Volume I, Page 103, Lines 1-9). Kimberland goes up the hill to the house and hides in an old shed out to the side. Kimberland is wearing a camouflaged coat and pants, his face mask and camouflaged gloves. (T.E. Volume I, Page 103, Lines 17-23). Jason secreted himself in an old shed until daylight; at which time he left the shed and squatted down beside the shed for a little while. He saw the smoke coming out of the chimney. Whereupon he pushed in the door and entered the house. (T.E. Volume I, Page 104, Lines 18-24). As Jason runs up against the door and pushes it in, he gains entry to the house with the gun in his hand, which Jason had loaded. (T.E. Volume I, Page 105, Lines 9-24). Jason gives the statement that Lloyd Ferrell gave him the loaded clip for the .380 plus three or four loose shells. (T.E. Volume I, Page 106, Lines 1-21). Jason further states that upon gaining entry to the house, he is faced with a man with a shotgun who shoots at him (Jason). Jason thereupon turned and ran, firing back in the direction of the house. (T.E. Volume I, Page 107, Lines 2-13). Jason runs into the woods behind Hobert and Mary Ferrells' home (T.E. Volume I, Page 108, Lines 19-22) and makes his way back to the pre-arranged rendezvous point. (T.E. Volume I, Page 109, Lines 1-3). Jason Kimberland is still wearing the camouflage wear and ski mask at this time (T.E. Volume

I, Page 109, Lines 16-20) and is carrying the gun, which he stops to reload with the remaining loose 2-3 shells. (T.E. Volume I, Page 109, Line 25; T.E. Volume I, Page 110, Lines 1-3). Jason Kimberland states that he hid in the bushes about a hundred feet from the road, where he was supposed to meet him (Lloyd Ferrell) and that he had no further contact with Lloyd since being let out on the road initially. (T.E. Volume I, Page 110, Lines 12-24). Jason admits that he lied to the officers (T.E. Volume I, Page 113, Lines 5-6) and that he provided them with the false name of "Anthony Wallace." (T.E. Volume I, Page 114, Lines 1-4). However, Jason does not remember when or where he made that statement. (T.E. Volume I, Page 114, Lines 10-15). Jason testifies that Chris Carpenter was present for the second statement. (T.E. Volume I, Page 114, Lines 22-24).

Kimberland also stated that other than Mike Fielder and the sheriff he talked to no one, was not allowed to make any phone calls and spoke to no one else other than the jailer during this period of time. (T.E. Volume I, Page 115, Lines 5-19). Jason Kimberland identified the duct tape, gloves, ski mask and gun as being in his possession and used by him on March 27, 1996 at the scene of the shooting of Hobert Ferrell. (T.E. Volume I, Page 117, Line 25; T.E. Volume I, Page 119, Line 3; T.E. Volume I, Page 119, Lines 21-23; T.E. Volume I, Page 120, Lines 16-25). Jason

Kimberland was unable to positively identify from pictures provided by the prosecution a green or blue car that was similar to Lloyd Ferrell's (T.E. Volume I, Page 121, Lines 15-20) and which car Jason Kimberland knew that Lloyd Ferrell had used on other occasions. (T.E. Volume I, Page 122, Lines 20-25).

The investigation of the scene of the shooting by the Sheriff's Department determined that only one set of footprints existed behind the house; however, no matchups were made with physical evidence on hand. (T.E. Volume I, Page 70, Lines 10-14).

Sheriff Davidson testified that a shotgun lay on the floor next to the body of Hobert Ferrell. (T.E. Volume I, Page 73, Lines 8-10). Upon Sheriff Davidson's examination of the shotgun, he unbreeched the shotgun and determined that the gun was unloaded and appeared to not have been discharged the morning of March 27, 1996. (T.E. Volume I, Page 72, Lines 18-25; T.E. Volume I, Page 73, Lines 1-5).

The Criminal Investigator for the Hardin County Sheriff's Department, Mike Fielder, testified that the gunman entered the house through the back door. (T.E. Volume II, Page 187, Lines 11-12). Agent Christopher Carpenter, the special agent with the Tennessee Bureau of Investigation provided testimony as to the number of shots that were fired in the Ferrell's residence on the morning of March 27, 1996. It was Carpenter's determination that

a total of five (5) shots were fired inside the residence. (T.E. Volume II, Page 277, Lines 4-5). The rounds identified were all .380 caliber, and of either Remington or Winchester manufacture. (T.E. Volume II, Page 277, Lines 14-25; T.E. Volume II, Page 278, Lines 1-25; T.E. Volume II, Page 279, Lines 1-11). Further ballistics tests determined that the identifiable .380 shells found throughout the floor of the Ferrells' home were fired from the .380 Jennings semi-automatic handgun found in the creek bed subsequent to the arrest of Jason Kimberland (T.E. Volume III, Page 394, Lines 9-22; T.E. Volume III, Page 395, Lines 6-14; T.E. Volume III, Page 395, Lines 16-19; T.E. Volume 395, Lines 23-24; T.E. Volume III, Page 398, Lines 12-13)

Subsequent to the shooting of Hobert Ferrell and the arrest of Jason Kimberland, the attorney for Hobert and Mary Ferrell, Mr. Curt Hopper, went to their residence of his own volition on March 27, 1996, on the evening of the shooting after observing trouble there in the morning. (T.E. Volume III, Page 406, Lines 9-11; T.E. Volume III, Page 407, Lines 20-22) Mr. Hopper met his client there, and assisted her in accessing the residence in order to obtain her clothing. (T.E. Volume III, Page 408, Lines 16-17) Additionally, Mr. Hopper took possession of certain sums of money that were retained in his possession because the banks were closed. (T.E. Volume III, Page 408, Lines 20-22) On March 28,

1996, Mary Ferrell and Mr. Hopper went to the Hardin County Bank and a private teller counted the money. (T.E. Volume III, Page 409, Lines 14-17) The total amount of cash was \$61,009.81. (T.E. Volume III, Page 410, Line 2). This money was musty, old and brittle. (T.E. Volume III, Page 410, Line 23)

Investigator Fielder received the names of Lloyd and Debra Ferrell from Jason Kimberland, and once those names were given, the investigation focused on them singularly; this despite information given to investigators and the Sheriff's Department that other people and circumstances were alleged to be implicated. (T.E. Volume II, Page 197, Lines 6-13) Stayce Shands, the fiance of Jason Kimberland (T.E. Volume II, Page 243, Line 25) testified that she observed a talk between Mr. Lloyd Ferrell and Jason two or three weeks before March 27, 1996, but not a conversation into which she was brought. (T.E. Volume II, Page 244, Lines 21-25; T.E. Volume II, Page 245, Lines 1-3) According to Stayce Shands, she inferred from Jason's remarks the nature of the conversation. On the drive from the home of Lloyd and Debra Ferrell, Stayce begged Jason not to get involved. (T.E. Volume II, Page 245, Lines 5-13) Again on March 26, 1996, the conversation between Stayce Shands and Jason Kimberland concerned this plan and she was told the name of the folks to be robbed: Hobert and Mary Ferrell. (T.E. Volume II, Page 246, Lines 11-17) Stayce Shands'

response to this information from Jason was to beg him not to do it. (T.E. Volume II, Page 246, Line 21) Stayce was unaware of Jason getting up and leaving on the morning of March 27, 1996. (T.E. Volume II, Page 248, Lines 3-5) Stayce remained unaware anything was amiss until Debra Ferrell called her March 27, 1996, between 8:00 a.m. and 8:30 a.m. (T.E. Volume II, Page 248, Lines 7-17) but Ms. Shands didn't understand what Ms. Ferrell was talking about. (T.E. Volume II, Page 249, Lines 6-7) Despite the phone call and the presence of her Jeep in the parking lot of the apartment complex, Ms. Shands did not notify the police that morning. (T.E. Volume II, Page 249, Lines 23-25; T.E. Volume II, Page 250, Lines 1-4) Stayce waited for Mike Fielder to show up at her door, approximately 10 to 15 minutes later. (T.E. Volume II, Page 250, Lines 6-7) Stayce Shands was further unaware that Jason Kimberland smoked marijuana on a regular basis, took pills on a regular basis, or that he was a drug dealer (T.E. Volume II, Page 264, Lines 12-25), despite Jason's testimony that he was a drug dealer (T.E. Volume I, Page 156, Lines 4-6) and did use drugs. (T.E. Volume I, Page 161, Lines 8-12) Subsequent to Stayce's interview with Mike Fielder and Andrea Davison, a tape recorder was hooked up to Stayce Shands' telephone in the event of a phone call from Debra or Lloyd Ferrell. (T.E. Volume II, Page 250, Lines 17-24) This tape



recorder was manually activated by Stayce Shands when the caller was identified as one of the two indicated persons. (T.E. Volume II, Page 251, Lines 2-3; T.E. Volume II, Page 252, Lines 12-17) Upon review of the tapes and transcripts thereof, it was determined that a large majority of the information provided by Debra Ferrell to Stayce Shands was wrong. (T.E. Volume II, Page 312, Lines 13-14) There was no other evidence linking Debra Ferrell to the activities on March 27, 1996.

On July 22, 1996, (emphasis added) a search warrant was executed at the home of Lloyd and Debra Ferrell and discovered were two boxes of .380 ammunition. (T.E. Volume II, Page 286, Lines 15-25; T.E. Volume II, Page 287, Lines 1-16) The ammunition that was found in the Ferrell's residence were of the Remington manufacture, with perhaps one or two of the shell casings that were Winchester. (T.E. Volume II, Page 295, Lines 5-8) The unfired ammunition recovered from the home of Lloyd E. Ferrell, was forwarded to Steve Scott at the Tennessee Bureau of Investigation Laboratory in Nashville. (T.E. Volume III, Page 390, Lines 2-5; T.E. Volume III, Page 399, Lines 10-15) Mr. Scott's conclusion was that the unfired ammunition he examined was consistent with the spent ammunition where both were of the same manufacturer. (T.E. Volume III, Page 399, Lines 20-22; T.E. Volume III, Page 400, Lines 14-16) Mr. Scott could not, however, say with any certainty

that his examinations of the ammunition found as a result of the search of Mr. Lloyd Ferrell's home established that it was the same batch or the same lot or the same production as the ammunition found at the scene of the crime. (T.E. Volume III, Page 401, Lines 17-22) The forensic pathologist determined that one shot had entered the body of Hobert Ferrell, and had produced three bullet holes. (Volume II, Page 319, Line 25; Volume II, Page 322, Lines 7-13) It is the further conclusion of the pathologist that the person shot and the gunman were not facing each other at the time of the shooting. (T.E. Volume II, Page 323, Lines 16-20) Investigation by Detective Davidson and Investigator Fielder of the Hardin County Sheriff's Department for the source of the .380 Jennings semi-automatic handgun never resulted in an identified source of the handgun. (T.E. Volume II, Page 227, Lines 23-25; T.E. Volume II, Page 228, Line 1; T.E. Volume II, Page 228, Lines 21-22) Investigation was not done by Special Agent Carpenter to determine if Jason Kimberland had obtained a .380 caliber gun from anyone else before the incident happened out at the Ferrell house. (T.E. Volume II, Page 296, Lines 6-10) Furthermore, no investigation was done by Special Agent Carpenter prior to the search warrant being served on July 22, 1996 for the home of Lloyd and Debra Ferrell as to any information to determine other means or methods that Jason Kimberland may have used to obtain a .380

handgun. (T.E. Volume II, Page 296, Lines 11-25; T.E. Volume II, Page 297, Lines 1-13) Also, in Special Agent Carpenter's investigation of the gun found at the scene, there was no direct connection made through serial numbers to Lloyd Ferrell. (T.E. Volume II, Page 314, Lines 19-24)

By means of a photo array, compiled by Special Agent Carpenter, attempts were made to establish the presence of Lloyd Ferrell with Jason Kimberland on the morning of March 27, 1996. The photo array compiled by the Agent consisted of Polaroid pictures of individuals with similar characteristics: height, build, age. These pictures were assembled so just the faces would be present. (T.E. Volume II, Page 288, Lines 18-23). However, when compared to all, Mr. Lloyd Ferrell's picture is the only one in which a particular outfit is worn. . .one which consists of an orange top, in a picture not taken by Agent Carpenter. (T.E. Volume II, Page 301, Lines 1-11) Furthermore, some of the men had on glasses. (T.E. Volume III, Page 369, Lines 10-12).

Mr. Paul Weirich was asked to view the photo array and attempt to identify the individual sitting in a car that he saw outside of Dodge's Store at approximately 5:00 a.m. on March 27, 1996. (T.E. Volume II, Page 297, Lines 19-25; T.E. Volume III, Page 357, Lines 20-25) Mr. Weirich identified Jason Kimberland as

one who was outside the car pumping gas, from his personal knowledge of Jason Kimberland. (T.E. Volume III, Page 358, Lines 19-23; T.E. Volume III, Page 359, Lines 2-8) However, upon viewing the photo array that included the picture of Lloyd Ferrell wearing the orange top, Mr. Weirich indicated that there were three individuals that . . . closely resembled that person. (T.E. Volume II, Page 298, Lines 10-13) It was only upon further prodding by Investigator Fielder, who was with Special Agent Carpenter at the time, that Mr. Weirich ultimately identified Mr. Ferrell. (T.E. Volume II, Page 298, Lines 16-19; T.E. Volume II, Page 299, Lines 16-19) During the presentation of this photo array to Mr. Weirich, only Investigator Fielder of the Hardin County Sheriff's office, and Special Agent Carpenter of the Tennessee Bureau of Investigation were present. . .no counsel was present. (T.E. Volume II, Page 300, Lines 14-16) Additionally, Mr. Charles Doughty, a "downstairs neighbor" of Jason Kimberland testified. (T.E. Volume II, Page 328, Line 23; T.E. Volume II, Page 329, Lines 14-15) Mr. Doughty observed Jason Kimberland getting into the passenger side of a medium sized four-door car that had its bright lights turned on. He was therefore, unable to identify the color or make or model of the car. (T.E. Volume II, Page 332, Lines 18-22; T.E. Volume II, Page 333, Lines 1-3; T.E. Volume II, Page 336, Line 24) Further, Mr. Doughty testified that he could

see the outline of the driver, but could not identify sufficiently even as to the gender of the driver - all he saw was an outline of a person on the driver's side. (T.E. Volume II, Page 333, Lines 13-16; T.E. Volume II, Page 343, Lines 23-24) Another witness, Jeanna Cook, lived in the same complex as Jason Kimberland. (T.E. Volume III, Page 345, Lines 8-25) On the morning of March 27, 1996, Ms. Cook observed Jason Kimberland talking to a man in a car. (T.E. Volume III, Page 346, Lines 18-25) Ms. Cook identified the car as a darker colored, newer model car, (T.E. Volume III, Page 347, Line 23; T.E. Volume III, Page 348, Line 6) and upon viewing a picture of the rear of the 1995 Buick LeSabre previously owned by Lloyd Ferrell, Ms. Cook indicates that she is "pretty sure" that there is a similarity between the two. (T.E. Volume III, Page 349, Lines 1-15) Ms. Cook testified in Court that she did not see Jason Kimberland leave with anyone that morning. (T.E. Volume III, Page 347, Lines 15-16) Her previous statement furnished to Agent Cook, however, stated that "(Jason) went out and got in that car. It was a dark colored car, a newer style car, a big car. I don't know about two doors or four doors. . . (Jason) got in the passenger side and they left. I didn't see which way they went. I didn't notice who the driver was or if there was other people in it". (T.E. Volume III, Page 352, Lines 4-8)

There was no corroboration that Lloyd Ferrell was at the scene of Hobert Ferrell's residence on March 27, 1996, other than the statement from Jason Kimberland. (T.E. Volume II, Page 203, Lines 13-19)

Mr. Lloyd Ferrell had titled in his name until on or about April 13, 1996, a 1995 Buick LeSabre, green in color with a Serial Number of 1G4HR52LOSH428874, which vehicle was traded in at Gwatney Chevrolet in Memphis, Tennessee. (T.E. Volume II, Page 316, Lines 9-10; T.E. Volume II, Page 317, Lines 2-23) This green Buick LeSabre was traded for a new 1996 Chevrolet pickup. (T.E. Volume II, Page 318, Line 5) During Mr. Paul Weirich's testimony, he was unable to specify what color the car was that he saw outside of Dodge's on March 27, 1996 at approximately 5:00 a.m., when it was still dark outside. Mr. Weirich could only state with assurance that it was a dark car. (T.E. Volume III, Page 357, Lines 20-25; Volume III, Page 385, Lines 7-19; Volume III, Page 386, Line 21)

The testimony of Mrs. Mary Ferrell indicated that paying cash only was a lifestyle choice for Hobert and Mary Ferrell for nearly fifty (50) years of their marriage. (T.E. Volume III, Page 414, Lines 24-25; T.E. Volume III, Page 415, Line 17) These folks paid

cash for their house and improvements and cash for a truck. (T.E. Volume III, Page 419, Lines 1-17; T.E. Volume III, Page 420, Lines 1-10) Additionally, cash was paid for their appliances and television set. (T.E. Volume III, Page 422, Lines 3-13) On the morning of March 27, 1996, Mrs. Ferrell saw only one person in a ski mask, and only one person come into her house. (T.E. Volume III, Page 427, Lines 20-25; T.E. Volume III, Page 428, Lines 1-5).

The jury found two defendants, one of whom was Lloyd Ferrell, guilty of first degree murder during the perpetration of a robbery after a deliberation of fifty (50) minutes. (T.E. Volume IV, Page 608, Lines 19-23; T.E. Volume IV, Page 610, Lines 12-16)

The sentencing phase of the trial was held directly after the jury was polled. (T.E. Volume IV, Page 611, Lines 8-9) The jury was told that as the State had filed a notice of intent to seek life without parole, that there were two (2) sentences available. (T.E. Volume IV, Page 611, Lines 13-15) The jury recommended sentencing of imprisonment for life. (T.E. Volume IV, Page 630, Line 25; T.E. Volume IV, Page 631, Lines 1-2)

## ARGUMENT

1. The evidence was insufficient to justify a rational trier of fact from finding guilt beyond a reasonable doubt in that there was insufficient evidence that the Defendant had the requisite intent to commit first degree murder.

The defendant contends that under the circumstances and the entire case, the evidence does not justify the guilty verdict which was returned by the jury. In Pennington v. State, 573 S.W. 2d 755 (Tenn. Crim. App. 1978) the Court stated, "It's well settled law that when the appellant attacks the sufficiency of the evidence, he has the burden to show on appeal that it preponderates against his guilt and in favor of his innocence."

A guilty verdict by a jury, approved by the trial judge accredits the testimony of the State's witnesses and resolves all conflicts in favor of the State. State v. Grace, 493 S.W. 2d 474, 476 (Tenn. 1974). State v. Hatchett, 560 S.W. 2d 627, 630 (Tenn. 1978). On appeal the State is entitled to the strongest legitimate view of the evidence, together with all the reasonable inferences to be drawn from it. State v. Cabbage, 571 S.W. 2d 832, 835 (Tenn. 1978) In deciding the issue of sufficiency of the evidence, the Court only determines whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable



doubt. Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); T.R.A.P. 13(e).

The defendant maintains that the only evidence of a conspiracy was illicitly obtained from Jason Kimberland at trial. This testimony from an accomplice was not corroborated during the course of the trial, and, in addition, Kimberland's testimony was full of inconsistencies. (T.E. Volume I, Pages 124-183; specifically Volume I, Page 164) Any corroboration the State contends existed was presented to the jury via testimony that would have been somewhat different if the severance of defendants had been allowed as requested.

The Court in Wiggins v. State, C.C.A. No. 03C01-9605-CC-00191 (1997 Tenn. Crim. App. Lexis 277) stated:

We note that in Tennessee adequate corroboration of accomplice testimony requires a fact testified to, entirely independent of the accomplice testimony, which leads to an inference that a crime has been committed and that the accused was implicated in the crime. See Clapp v. State, 94 Tenn. 186, 30 S.W. 214, 217 (1895). The corroboration need only be slight circumstances and need not be sufficient to support a conviction by itself. See State v. Copeland, 677 S.W. 2d 471, 475 (Tenn. Crim. App. 1984). Adequate corroborating evidence need only fairly and legitimately tend to connect the accused with the commission of the crime. Id.

The defendant, Lloyd Ferrell, maintains that the weak circumstantial evidence in this case does not rise to the level of evidence that fairly and legitimately tends to connect him with

the commission of the crime. Further, the error of the Court in overruling defendant Lloyd Ferrell's Motion for Severance is certainly obvious here.

Therefore, the defendant contends that a reversal is required in this matter in that there is insufficient evidence to corroborate the testimony of an accomplice. Any testimony the State attempted to use to corroborate the accomplice, Jason Kimberland's testimony was very weak, very circumstantial and very suspicious i.e.: Stayce Shands, Paul Weirich, Charles L. Doughty, III, and Jeanna Cook. Justice dictates a reversal of defendant Lloyd Ferrell's conviction.

Jason Kimberland's credibility was certainly attacked when he admitted he used drugs. (T.E. Volume I, Page 161, Lines 8-12) and was a drug dealer. (T.E. Volume I, Page 156, Lines 4-6) Further, he testified that he had taken enough valiums or narcotics that he couldn't remember the statements he gave or what he did at the jail. (T.E. Volume I, Page 135, Lines 18-23) His entire testimony was full of inconsistencies. (T.E. Volume I, Pages 124-183)

Further, the credibility of Stacey Shands must be questioned and examined closely, due to the fact that she testified she was unaware that Jason Kimberland smoked marijuana on a regular basis, took pills on a regular basis, or that he was a drug dealer, (T.E. Volume II, Page 264, Lines 12-25) despite the fact that they lived

together for six or seven months (T.E. Volume II, Page 244, Lines 1-4) and they were engaged to be married. (T.E. Volume II, Page 243, Lines 21-25) This is not reasonable or logical.

Steve Scott, with the Tennessee Bureau of Investigation, concluded that he could not say with any certainty, that his examinations of the ammunition found as a result of the search of defendant Lloyd Ferrell's house, established that it was of the same batch, or the same lot, or the same production as the ammunition found at the scene of the crime. (T.E. Volume III, Page 401, Lines 17-22) The investigators for the Hardin County Sheriff's Department never identified the source of the .380 Jennings semi-automatic handgun involved in this case (T.E. Volume II, Page 227, Lines 23-25; T.E. Volume II, Page 228, Line 1; T.E. Volume II, Page 228, Lines 21-22) T.B.I. Investigator Chris Carpenter never inquired nor investigated to determine whether Jason Kimberland had the means or methods to obtain a .380 handgun, (T.E. Volume II, Page 296, Lines 11-25; T.E. Volume II, Page 297, Lines 1-13) or whether Jason Kimberland had obtained a .380 caliber handgun from anyone else before the incident at the Ferrell house. (T.E. Volume II, Page 296, Lines 6-10) There was no direct connection made by serial numbers of the gun found at the scene to defendant Lloyd Ferrell. (T.E. Volume II, Page 314, Lines 19-24)

By means of a photo array, compiled by Special Agent Carpenter, attempts were made to establish the presence of Lloyd Ferrell with Jason Kimberland on the morning of March 27, 1996. The photo array compiled by the Agent consisted of Polaroid pictures of individuals with similar characteristics: height, build, age. These pictures were assembled so just the faces would be present. (T.E. Volume II, Page 288, Lines 18-23) However, when compared to all, Mr. Lloyd Ferrell's picture is the only one in which a particular outfit is worn . . . one which consists of an orange top, in a picture not taken by Agent Carpenter. (T.E. Volume II, Page 301, Lines 1-11) Furthermore, some of the men had on glasses. (T.E. Volume III, Page 369, Lines 10-12)

Mr. Paul Weirich was asked to view the photo array and attempt to identify the individual sitting in a car that he saw outside of Dodge's Store at approximately 5:00 a.m. on March 27, 1996. (T.E. Volume II, Page 297, Lines 19-25; T.E. Volume III, Page 357, Lines 20-25) Mr. Weirich identified Jason Kimberland as one who was outside the car pumping gas, from his personal knowledge of Jason Kimberland. (T.E. Volume III, Page 358, Lines 19-23; T.E. Volume III, Page 359, Lines 2-8) However, upon viewing the photo array that included the picture of Lloyd Ferrell wearing the orange top, Mr. Weirich indicated that there were three individuals that . . . closely resembled that person. (T.E. Volume

II, Page 298, Lines 10-13) It was only upon further prodding by Investigator Fielder, who was with Special Agent Carpenter at the time, that Mr. Weirich ultimately identified Mr. Ferrell. (T.E. Volume II, Page 298, Lines 16-19; T.E. Volume II, Page 299, Lines 16-19) During the presentation of this photo array to Mr. Weirich, only Investigator Fielder of the Hardin County Sheriff's Office, and Special Agent Carpenter of the Tennessee Bureau of Investigation, were present . . . no counsel was present. (T.E. Volume II, Page 300, Lines 14-16) Additionally, Mr. Charles Doughty, a "downstairs neighbor" of Jason Kimberland testified. (T.E. Volume II, Page 328, Line 23; T.E. Volume II, Page 329, Lines 14-15) Mr. Doughty observed Jason Kimberland getting into the passenger side of a medium sized four-door car that had its bright lights turned on. He was therefore, unable to identify the color or make or model of the car. (T.E. Volume II, Page 332, Lines 18-22; T.E. Volume II, Page 333, Lines 1-3; T.E. Volume II, Page 336, Line 24) Further, Mr. Doughty testified that he could see the outline of the driver, but could not identify sufficiently even as to the gender of the driver - all he saw was an outline of a person on the driver's side. (T.E. Volume II, Page 333, Lines 13-16; T.E. Volume II, Page 343, Lines 23-24) Another witness, Jeanna Cook, lived in the same complex as Jason Kimberland. (T.E. Volume III, Page 345, Lines 8-25) On the morning of March 27, 1996, Ms. Cook observed Jason Kimberland

talking to a man in a car. (T.E. Volume III, Page 346, Lines 18-25) Ms. Cook identified the car as a darker colored, newer model car, (T.E. Volume III, Page 347, Line 23; T.E. Volume III, Page 348, Line 6) and upon viewing a picture of the rear of the 1985 Buick LeSabre previously owned by Lloyd Ferrell, Ms. Cook indicates that she is "pretty sure" that there is a similarity between the two. (T.E. Volume III, Page 349, Lines 1-15) Ms. Cook testified in Court that she did not see Jason Kimberland leave with anyone that morning. (T.E. Volume III, Page 347, Lines 15-16) Her previous statement furnished to Agent Cook, however, stated that "(Jason) went out and got in that car. It was a dark colored car, a newer style car, a big car. I don't know about two doors or four doors. . . (Jason) got in the passenger side and they left. I didn't see which way they went. I didn't notice who the driver was or if there was other people in it.". (T.E. Volume III, Page 352, Lines 4-8)

There was no corroboration that defendant Lloyd Ferrell was at the scene of Hobert and Mary Ferrell's residence on March 27, 1996, other than the statement of Jason Kimberland. (T.E. Volume II, Page 203, Lines 13-19)

During Paul Weirich's testimony, he was unable to specify what color the car was that he saw outside of Dodge's Store on March 27, 1996, at approximately 5:00 a.m., when

it was still dark outside. Mr. Weirich could only state with assurance that it was a dark car. (T.E. Volume III, Page 357, Lines 20-25)

Defense counsel maintains that the inconsistencies in the State's case, along with the gaps and holes, are such that there was not a showing of sufficient evidence to convict the defendant, Lloyd Ferrell.

2. The Court erred in overruling the defendant's Motion for Judgment of Acquittal due to insufficiency of evidence.

At the conclusion of all of the evidence defense counsel for co-defendant Debra Ferrell moved for a judgment of acquittal. The trial court overruled the motion and sent the case to the jury. (T.E. Volume IV, Page 490, Lines 9-18) In State v. Peat, 790 S.W. 2d 547 (Tenn. Crim. App. 1990) the court stated that, "(2,3) The motion for a judgment of acquittal presents a question of law. The trial judge's only concern is the legal sufficiency as opposed to the weight of the evidence. In determining whether "the evidence is insufficient to sustain a conviction, at the conclusion of all the evidence, the trial judge must consider the evidence introduced by the parties, disregard any evidence which conflicts with the evidence introduced by the defendant, and afford the State the strongest legitimate view of the evidence, including all reasonable inferences which may be drawn from the evidence." In

State v. Hall, 656 S.W. 2d 60 (Tenn. Crim. App. 1983) the court stated that, "(1,2) Thus, it is the duty of the trial court and this court to look only at all of the evidence introduced by the State, to take the strongest legitimate view of it in favor of the State, and to allow all reasonable inferences from it in the State's favor; to discard all countervailing evidence, and if then, there is any dispute as to any material determinative evidence, or any doubt as to the conclusion to be drawn from the evidence of the State, the trial judge should properly overrule the motion and it will be our duty to affirm. State v, Thompson, 549 S.W. 2d 943 (Tenn. 1977) In dealing with a motion for a new trial, the trial judge is concerned only with the legal sufficiency of the evidence and not with the weight of the evidence. It is defense counsel's contention, therefore, that the trial court should have granted defense counsel for co-defendant Debra Ferrell's motion for judgement of acquittal.

3. The Court erred in overruling the defendant's motion for severance from co-defendant Debra Ferrell. The statements by Debra Ferrell were prejudicial to defendant Lloyd Ferrell and Debra Ferrell was not available for cross-examination by counsel for defendant Lloyd Ferrell.

The trial court's failure to grant a motion for severance as filed by defendant Lloyd Ferrell in the foregoing action



constitutes an abuse of discretion by denying Lloyd Ferrell the right to cross-examine his co-defendant, Debra Ferrell, with whom he was joined in trial, and thus injustice was done to Lloyd Ferrell.

A pretrial motion to sever by the appellant was overruled; it was subsequently renewed in open court at the beginning of the trial of the matter herein, and again overruled. (See: T.E. Volume I, Motion to Sever, Pages 2-9) Defendant Lloyd Ferrell again renewed his motion to sever several times during the trial. (T.E. Volume II, Page 239, Lines 23-25; T.E. Volume II Page 240, Lines 1-2; T.E. Volume IV, Page 490 Line 25; T.E. Volume IV, Page 491, Lines 1-4) Jason Kimberland had confessed to the attempted robbery and shooting of Hobert Ferrell. (T.E. Volume I Page 114, Lines 20-25; T.E. Volume II, Page 191, Lines 1-11) He did so over a period of hours of being in custody without contact by phone or in person with an attorney. (T.E. Volume I Page 115, Lines 2-19 and T.E. Volume II, Page 191, Lines 13-20) Counsel did not represent Jason Kimberland until after he made his confession. (T.E. Volume IV, Page 474, Lines 10-13) Stayce Shands testified that she was the girlfriend of Jason Kimberland, the confessed perpetrator herein. (T.E. Volume II, Page 243, Lines 21-25) at the time the events took place in March, 1996. Stayce Shands testified for the State. (T.E. Volume II, Page 242-259) Jason Kimberland testified that he lived

with her, but contributed no money for the rent or the utilities of the residence. (T.E. Volume I, Page 155, Lines 15-25; T.E. Volume I, Page 156, Lines 1-8) The testimony of Jason Kimberland and Stayce Shands corroborated that she had been in the same geographic area on one occasion when Jason Kimberland and defendant Lloyd Ferrell talked, but she never heard any of their conversation. (T.E. Volume I, Page 82, Lines 20-25; T.E. Volume I, Page 83, Lines 1-11; T.E. Volume II, Page 244, Lines 12-25; T.E. Volume II, Page 245, Lines 1-5) Her only knowledge of these conversations was that which was reported to her by Jason, an admitted drug addict and dealer who was under the intoxicating influences of drugs at the time he relayed such

conversations to her. (T.E. Volume II, Page 245, Lines 5-13;

T.E. Volume I, Page 173,

Lines 24-25; T.E. Volume I, Page 174, Lines 1-23) Stayce also testified that she had no knowledge of any drug use or drug dealing by her live-in lover, even though he had testified to such activities being routine, and drug dealing as being his primary source of income. (T.E. Volume II, Page 264, Lines 12-25; T.E. Volume II, Page 244, Lines 1-4; T.E. Volume II, Page 243, Lines 21-25; T.E. Volume I, Page 161, Lines 8-12; T.E. Volume I, Page 156, Lines 4-6) On the night before the incident, Stayce testified that Jason informed her of his intent to rob the home of Hobert

and Mary Ferrell. Pursuant to Stayce's testimony, she believed that she had convinced Jason to not rob the Ferrell's residence and she went to bed. (T.E. Volume II, Page 246, Lines 1-25; T.E. Volume II, Page 245, Lines 21-25) Stayce did not contact the police the next day, even after she knew that something very wrong had happened involving Jason. . . the police came to her. (T.E. Volume II, Page 250, Lines 1-9) Stayce's testimony then reported conversations that she had with co-defendant Debra Ferrell, subsequent to the incident and events at the Ferrell farm. Some of these conversations she recorded with a tape recorder set up on her telephone by the Hardin County Sheriff's investigator. (T.E. Volume II, Page 250 Lines 13-25; T.E. Volume II, Page 251, Lines 1-25; T.E. Volume II, Page 252, Lines 1-20) The tape recorder was operated solely by Stayce Shands at her discretion. (T.E. Volume II, Page 250, Lines 23-25; T.E. Volume II, Page 251, Lines 1-3) The State introduced these tapes as evidence over objection by defense counsel (T.E. Volume II, Page 255, Lines 10-11; T.E. Volume II, Page 258, Line 1) to establish the conspiracy of Debra and Lloyd Ferrell with Jason Kimberland to rob the elder Ferrells and the furtherance of the conspiracy by concealment of their involvement therein. (T.E. Volume II Page 256 Line 12; T.E. Volume II, Page 257, Lines 5-6; T.E. Volume II, Page 257, Line 25; T.E. Volume II,

Page 253, Lines 17-18; T.E. Volume II, Page 259, Line 5) The jury listened to the tapes and each juror was provided with a transcript of each of the tapes entered into evidence. (T.E. Volume II, Page 255, Lines 8-18; T.E. Volume II, Page 256, Line 12; T.E. Volume II, Page 257, Lines 5-6; T.E. Volume II, Page 257, Line 25; T.E. Volume II, Page 258, Lines 17-18; T.E. Volume II, Page 259, Line 5) However, the defense rested for Debra Ferrell and she did not testify, thus denying Lloyd Ferrell the right of cross-examination of the hearsay testimony introduced by the State. (T.E. Volume IV, Page 488, Line 3)

A defendant in a criminal trial is guaranteed the right of confrontation as to those witnesses appearing against him. U.S. Constitution, Article VI, Article XIV, Constitution of the State of Tennessee, Section IX.

In *Bruton*, Evans and Bruton were co-defendants on trial for armed postal robbery. The oral confessions of Evans were given to a postal official without benefits of counsel present. Upon direct examination of the postal inspector, these confessions were entered into evidence. Evans did not testify and Bruton was unable to cross-examine him. *Bruton v. U.S.*, 391 U.S. 123, 88 S. Ct. 1620; 1968 U.S. Lexis 1630; 20 L. Ed. 2d 476

. . . Evans' oral confessions were in fact testified to, and were therefore actually in evidence. That testimony was legitimate evidence against Evans and to that extent was properly before

the jury during its deliberations. Even greater, then, was the likelihood that the jury would believe Evans made the statements and that they were true - not just the self-incriminating portions but those implicating petitioner as well. Plainly, the introduction of Evans' confession added substantial, perhaps even critical, weight to the Government's case in a form not subject to cross-examination, since Evans did not take the stand. Petitioner thus was denied his constitutional right of confrontation. Bruton, supra 391 U.S. 123, 127-138, 1968 U.S. Lexis 1630, \*\*\*9

There is a clear parallel to draw between the events that occurred in the instant case and those as recited herein in the Bruton case. Whatever statements that Debra Ferrell made on the tapes that would be self-incriminating, also implicated the appellant herein. Lloyd Ferrell had the absolute right to cross-examine Debra Ferrell, but was unable to do so. Debra Ferrell did not take the stand pursuant to her absolute right against self-incrimination. U.S. Constitution, Article V, Article XIV, Constitution of the State of Tennessee, Section IX. Thus, defendant Lloyd Ferrell was denied his constitutional right of confrontation.

The standard of appellate review as to a trial court's ruling on motion for severance by the defendants in a joint trial is clear. That standard is whether there should be a severance of defendants and a separate trial as to one or more co-defendants is a matter which rests within the sound discretion of the trial court; and the appellate court will not interfere with the

exercise of this discretion absent clear abuse. State of Tennessee, Appellee v. Frank Daniel Burton, Sr., David Kenneth Burton and Robert Kenneth Jones. 751 S.W. 2d 440, \*447; 1988 Tenn. Crim. App. LEXIS 124, \*\*17. However, when the ends of justice demand such severance, and probable injustice has been done to the party by the refusal, a new trial should be granted to enable the party to get the testimony of which he had been deprived by the action of the trial court Watson v. State (1886) 84 Tenn. 604, 82 A.L.R. 366 (This case was a prosecution for conspiracy to obtain money by false and fraudulent pretenses. The defendant sought severance on the grounds that his co-defendant would testify for him, which motion was denied by the trial court. The appellate court stated that this was not a very strong case for severance and for overruling the discretion of the trial judge, but that where the ends of justice demanded such severance, a new trial should be granted so that the petitioner get the testimony of which he had been deprived by the action of the trial court.)

In a conspiracy trial, the defendant is entitled to severance on basis of necessity of co-defendant's testimony only if defendant establishes that the co-defendant would actually testify at defendant's separate trial. United States v. Elder (1996, CA6 Tenn) 90 F3d 1110, 45 Fed Rules Evidence Serv 113, 35 FR Ser 3d 1470, reh, en banc, 82 A.L.R. 3d 366. Upon review of the entire

four volumes of the transcript, there is nothing in the record that indicates that Debra Ferrell will not testify on behalf of her husband, Lloyd Ferrell.

Clearly in the context of the prosecution of Lloyd Ferrell, his co-defendant's statements on tape and the reinforcement to the jury through transcript and oral presentation ". . . added substantial, perhaps even critical, weight to the Government's case in a form not subject to cross-examination. . ." Bruton, id. Unquestionably, Lloyd Ferrell was prejudiced by the joinder of the parties herein and the appropriate remedy is to grant a separate trial or whatever other relief justice requires. United States v. Brannan (1972 CA6 Tenn) 457 F2d 1062; United States v. Dye (1974, CA6 Tenn. ) 508 F2d 1226, cert den 420 US 947, 43 L. Ed2d 653, 95 S Ct. 1395, 82 A.L.R. 3d 366. Certainly, "the ends of justice demand such severance. . ." Watson id.

4. The Court erred in allowing into evidence the statements of co-defendant Debra Ferrell, made to Stayce Shands over objection of the defendant, Lloyd Ferrell.

The defendant objected to the introduction of the statements of co-defendant Debra Ferrell, made on tape to Stayce Shands, but the judge overruled the objection and allowed the jury to hear Shands' testimony regarding said conversation and the actual tape

recordings with transcripts (T.E. Volume II, Page 248, Lines 18-24; T.E. Volume II, Page 255, Lines 10-11; T.E. Volume II, Page 256, Line 12; T.E. Volume II, Page 257, Line 6; T.E. Volume II, Page 258, Line 1; T.E. Volume II, Page 258, Lines 17-18; T.E. Volume II, Page 259, Line 5) Stayce Shands was contacted by the Hardin County Sheriff's Department and asked to monitor phone conversations with defendant, Debra Ferrell, and she was further asked to tape record these conversations and ask Mrs. Debra Ferrell questions. (T.E. Volume I, Page 71, Lines 16-25; T.E. Volume I, Page 72, Line 1) Therefore, it certainly appears that Stayce Shands was acting as an agent for the Hardin County Sheriff's Department. It further appears that defendant Debra Ferrell was not advised of her right to remain silent and, therefore, these tapes should not have been admitted into evidence. (T.E. Volume I, Page 72, Lines 2-13) This goes back to the key error of the Court in overruling the Motion for Severance by defendant Lloyd Ferrell. Defendants Lloyd Ferrell and Debra Ferrell should not have been tried together and it was harmful error to allow such.

5. The Court erred in overruling defendant's request to admit the entire recorded statement made by defendant Lloyd Ferrell to J. W. Kimberland, after the State was allowed to play certain recordings for the jury.



Defense counsel for defendant Lloyd Ferrell moved the trial court to allow a transcript and a tape recording of a conversation between defendant Lloyd Ferrell and J. W. Kimberland to be played to the jury and submitted as evidence in this cause. (T.E. Volume III, Page 447, Lines 10-25; T.E. Volume III, Page 448, Lines 1-25; T.E. Volume III, Page 449, Lines 1-25) The Court would not allow the tape in question to be admitted as evidence. (T.E. Volume III, Page 449, Lines 9-23) The defendant asserts that it was error for the Court not to allow the jury to hear this evidence. Defendant Lloyd Ferrell's statements should have been heard by the jury for a determination as to whether they tended to show the defendant innocent and what weight they should carry. Fair play would dictate the admission of said tape, especially after the Court allowed the State to play tapes of unsevered co-defendant, Debra Ferrell, and Stayce Shands. (See Bright v. State, 232 S.W. 2d 53, 56, 191 Tenn. 249, as referred to in Cole v. State, 498 S.W. 2d 915 (Tenn. Crim. App. 1973) Defendant Lloyd Ferrell attempted to admit the tape in question through J. W. Kimberland, the witness who taped the conversation with the assistance of the Hardin County Sheriff's Department

(T.E. Volume III, Page 447, Line 12-25; T.E. Volume III, Page 448, Lines 1-24; T.E. Volume III, Page 449, Lines 1-8)

The Court committed error in not allowing the aforementioned tape to be admitted as evidence and played to the jury.

6. The prosecution made improper and inflammatory remarks in closing argument, to-wit:

(a) By stating to the jury that they "like a doctor, should remove all of the cancer" by convicting Debra Ferrell and Lloyd Ferrell.

(b) By suggesting that Lloyd Ferrell was attempting to or contemplating the murder of Stacey Shands, of which there was no evidence presented in trial.

Defense counsel maintains that in view of the fact that the State's case was highly circumstantial, the District Attorney's remarks that the jury "like a doctor, should remove all the cancer" by convicting defendant Lloyd Ferrell, was highly prejudicial. The Court in State v. Sutton, 562 S.W. 2d 820 (Tenn. 1978) stated that:

(1) In determining whether statements made in closing argument constitute reversible error, it is necessary to determine if the statements were improper, and if so, whether the impropriety affected the verdict. Judge v. State, 539 S.W. 2d 340 (Tenn. Crim. App. 1976) see Harrington v. State, 215 Tenn. 338, 385 S.W. 2d 75 (1965).

(2) Because argument of counsel is a valuable privilege that should not be unduly restricted, our courts give wide latitude to action of a trial judge in controlling arguments of counsel will not be

reversed absent an abuse of discretion. Smith v. State, 527 S.W. 2d 737 (Tenn. 1975)

(3,4) Closing argument must be temperate, must be predicated on evidence introduced during the trial of the case, and must be pertinent to the issues being tried. Russell v. State, 532 S.W. 2d 268, 271 (Tenn. 1976)

Defense counsel maintains that the argument in question was not predicated on the evidence introduced during the trial and that the comments were highly prejudicial.

The test of whether prosecutorial misconduct constitutes reversible error is whether it could have affected the verdict to the prejudice of the defendant. Harrington v. State, 385 S.W. 2d 758 (1965). State v. Lunati, 665 S.W. 2d 739 (Tenn. Crim. App. 1983). In making that determination the case of Judge v. State, 539 S.W. 2d 342 (Ct. Of Crim. App. 1976) sets forth five factors. (1) The conduct complained of viewed in context and light of facts and circumstances of case; (2) The curative measures undertaken by the court and the prosecution; (3) The intent of the prosecution in making the improper statement; (4) The cumulative effect of the improper conduct and any other errors in the record and (5) The relative strength of weakness of the case.

There is no evidence in the record to support the State's statement in argument. The cumulative effect of the improper argument and the relative strengths and weakness of the case

speak for itself. One cannot beyond a reasonable doubt declare that this improper argument was harmless. This is an extremely prejudicial and improper inference from the evidence.

7. The Court erred in meeting with a juror, during the course of the trial, and ruling to dismiss the juror, after the close of proof, outside the presence of defense counsel for defendant Lloyd Ferrell.

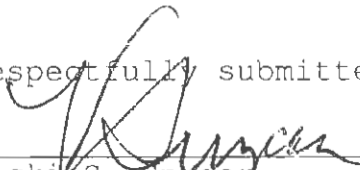
The trial judge met with a juror, Mr. Steven Roberts, who occupied Seat #2 during the trial, in chambers with the court reporter present, but not counsel for defendant Lloyd Ferrell or defendant Debra Ferrell. (T.E. Volume IV, Page 579, Lines 18-25; T.E. Volume IV, Page 580, Lines 1-25; T.E. Volume IV, Page 581, Lines 1-25) The Court decided to excuse said juror before hearing from defense counsel for defendant Lloyd Ferrell. Counsel defendant Lloyd Ferrell objected to the removal of juror Steven Roberts. (T.E. Volume IV Page 585, Lines 7-8) The removal took place immediately, prior to the charge and deliberations.

The trial judge decided to dismiss juror Roberts without first hearing from counsel for defendant Lloyd Ferrell. The decision by the trial judge to dismiss said juror at that juncture was arbitrary. (See Hines v. State, 77 Tenn. (8 Hump.) 597, 599 (1848) The remedy in this instance is not an acquittal, but rather a new trial. (Hines v. State, supra) and a venire de novo, State v. Max, 714 S.W. 2d 289 (Tenn. Crim. App. 1986)

CONCLUSION

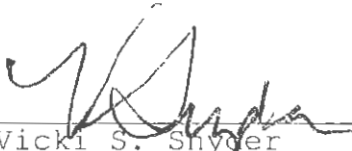
For the reasons stated herein, the defendant respectfully requests that the judgment of the Trial Court be reversed and dismissed or alternatively, remanded back to the Trial Court for a new trial and/or sentencing hearing.

Respectfully submitted,

  
\_\_\_\_\_  
Vicki S. Snyder  
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CERTIFICATE OF SERVICE

I, Vicki S. Snyder, hereby certify that a true and exact copy of the foregoing brief has been forwarded to John Knox Walkup, Attorney General, State of Tennessee, Criminal Justice Division, 425 Fifth Avenue North, Nashville, Tennessee 37242-0493.

  
\_\_\_\_\_  
Vicki S. Snyder  
Assistant District  
Public Defender  
24<sup>th</sup> Judicial District

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

|                      |   |                                |
|----------------------|---|--------------------------------|
| STATE OF TENNESSEE   | ) |                                |
|                      | ) |                                |
| Appellee             | ) |                                |
|                      | ) |                                |
| Vs.                  | ) | HARDIN CRIMINAL                |
|                      | ) | C.C.A. No. 02C01-9708-CC-00327 |
|                      | ) |                                |
| LLOYD EUGENE FERRELL | ) |                                |
|                      | ) |                                |
| Appellant            | ) |                                |

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ON APPEAL AS OF RIGHT

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REPLY BRIEF OF THE APPELLANT

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| <i>Sweat v. Rogers</i> ,<br>53 Tenn. 117 (1871). . . . .  | 5    |
| <i>United States v. Elder</i><br>(1996, CA6 Tenn.) 90 F3d 1110, 45 Fed Rules<br>Evidence Serv. 113, 35 FR Ser. 3d. 1470, reh, en banc,<br>82 A.L.R. 3d 366. . . . . | 8    |

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*United States v. Snider*,  
 720 F. 2d 985, 992 (8<sup>th</sup> Cir. 1983) cert. denied, 465,  
 U.S. 1107, 104 S. Ct. 1613, 80 L. Ed. 2d 142 (1984). . . . . 5

*United States v. Tarantino*,  
 846 F. 2d 1384, 1412 (D.C. Cir. 1988),  
 cert. denied, 488 U.S. 867, 109 S. Ct. 174, 102  
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OTHER AUTHORITIES:

James C. Scoville, Comments, *Deadly Mistakes: Harmless  
 Error in Capital Sentencing*, 54 U. Chi. L. Rev.  
 740, 741-42 (1987). . . . . 8

Rule 52(a) Tenn. Rules of Criminal Procedure. . . . . 8

Rule 36(b) Tenn. Rules of Appellate Procedure. . . . . 8

Tennessee Rules of Evidence, 802. . . . . 3

## INTRODUCTION

The appellant, Lloyd Ferrell, relies on his original brief filed in this matter in response to the State's brief. The only issues the appellant addresses in his reply brief are issues 3 and 4 (as numbered in the appellant's brief) and issues II and III (as numbered in the State's brief).

REPLY ISSUE: ISSUE 3 AND ISSUE 4

The Court erred in overruling the defendant's Motion for Severance from co-defendant Debra Ferrell. The statements by Debra Ferrell were prejudicial to defendant Lloyd Ferrell, and Debra Ferrell was not available for cross-examination by counsel for Debra Ferrell. The Court erred in allowing into evidence the statements of co-defendant, Debra Ferrell, made to Stayce Shands, over objection of the defendant, Lloyd Ferrell.

## ARGUMENT

The defendant argues that the statements made by co-defendant, Debra Ferrell, to Stayce Shands are hearsay. (Trial Exhibits 9 and 10). Therefore, said testimony is inadmissible as evidence unless it is admissible pursuant to an exception to the hearsay rule. (Tenn. Rules of Evidence, 802)

The trial court's failure to grant a motion for severance as filed by defendant Lloyd Ferrell in the foregoing action constitutes an abuse of discretion by denying Lloyd Ferrell the right to cross-examine his co-defendant, Debra Ferrell, with whom he was joined in trial, and, thus, injustice was done to Lloyd Ferrell.

A pretrial motion to sever by the appellant was overruled; it was subsequently renewed in open court at the beginning of the trial of the matter herein, and again overruled. (See: T.E. Volume I, Motion to Sever, Pages 2-9) Defendant Lloyd Ferrell again renewed his motion to sever several times during the trial. (T.E. Volume II, Page 239, Lines 23-25; T.E. Volume II Page 240, Lines 1-2; T.E. Volume IV, Page 490 Line 25; T.E. Volume IV, Page 491, Lines 1-4).

In the brief filed by the State, page 22 contains the following paragraph:

This rule provides "a statement by a co-conspirator of a party during the course of and in the furtherance of the conspiracy" may be offered against that party. Thus, before such statements are admissible as evidence, (1) there must be a conspiracy, (2) the declarant must be a co-conspirator of the defendant, (3) the statement must be made during the course of the conspiracy, (4) the statement must be made in

furtherance of the conspiracy, (5) there must be independent evidence that the conspiracy existed. Tenn. R. Evid. 803(1.2)(E); *State v. Hutchinson*, 898 S.W. 2d 161, 170 (Tenn. 1994), cert. denied, \_\_\_ U.S. \_\_\_, 116 S. Ct. 137, 133 L. Ed. 2d 84 (1995). *State v. Gaylor*, 862 S.W. 2d 546, 553 (Tenn. Crim. App. 1992) per. app. denied (Tenn. 1993); *State v. Hodgkinson*, 778 S.W. 2d 54, 61 (Tenn. Crim. App.), per. app. denied (Tenn. 1989).

The defendant would submit that all five elements must be shown in order for a statement made by a co-defendant of a party, during the course of and in furtherance of a conspiracy, be allowed as admissible evidence. *State v. Welch*, C.C.A. No. 01-C-01-9601-CC-00005 (1997 Tenn. Crim. App. LEXIS 682).

In the case at hand, the conspiracy, if one existed, was to commit robbery. The defendant was charged with first degree murder and criminal conspiracy to commit aggravated robbery. The conspiracy terminated with the consummation of the robbery. The homicide of Mr. Hobert Ferrell was incidental to the robbery. These facts are similar to the facts in *State v. Walker*, 910 S.W. 2d 381 (Tenn. 1995). The Court in *Walker* at page 386, stated:

“If a further conspiracy existed at that time it would of necessity have been to conceal the circumstances of the homicide and concealment of the murder weapon. Branam’s statement to Mrs. Elliott went far beyond that, relating the circumstances of the robbery as well as the facts surrounding the shooting of the victim. It was inadmissible.

In reference to Mrs. Elliott’s repetition of her conversation with Ernest J. Walker, the record shows she related the substance of two conversations. The first of these involved only a statement he made that the shell casings discovered at the scene was not sufficient evidence to stand up in court. She testified that later on, after her husband got out of jail, they talked to Ernest Williams again when he told them about the circumstances surrounding the robbery and homicide, including the fact that defendant did the shooting. This too was inadmissible.



The defendant would submit that the conspiracy had ended when the robbery was complete. The conversations that co-defendant Debra Ferrell had with Stacye Shands were not regarding concealing the murder weapon. They were really narrative statements of past conduct between the conspirators. *Walker*, at page 386. The statements in question contained in Trial Exhibits 9 and 10, were not in furtherance of the conspiracy of aggravated robbery, because it was consummated and, therefore, the recorded statements were not admissible against the defendant, Lloyd Ferrell, in this case. (T.E. Volume II, Page 250-259).

In *State v. Walker*, 910 S.W. 2d 381, 403 (Tenn. 1995), the Court stated:

A second requirement for the admission of a co-conspirator's declaration is that the declaration must be made "during the course of the conspiracy." If the conspiracy either had not yet begun or had ended at the time the statement was made, the declaration is inadmissible. *Owens v. State*, 84 Tenn. 1 (1885); *Sweat v. Rogers*, 53 Tenn. 117 (1871); *State v. Gaylor*, 862 S.W. 2d at 554. A conspiracy may continue after the crime that was its object has been completed for, among other purposes, the concealment of the crime or to prevent witnesses from testifying. *State v. Crabtree*, 655 S.W. 2d 173, 178 (Tenn. Crim. App. 1983).

The final condition for admission of a co-conspirator's declaration is that the statement must be made in furtherance of the conspiracy. In this regard, "the statements must somehow advance the objectives of the conspiracy, not merely inform the listener of the declarant's activities." *State v. Hutchison*, 898 S.W. 2d 161, 170, n. 6 (Tenn. 1994) (quoting *United States v. Snider*, 720 F.2d 985, 992 (8<sup>th</sup> Cir. 1983), *cert. denied*, 465, U.S. 1107, 104 S. Ct. 1613, 80 L. Ed. 2d 142 (1984)). Casual or purposeless conversation or gossip about the crime does not meet this requirement, *State v. Hutchison*, 898 S.W. 2d at 170; nor do "mere narratives of past successes and failures." *United States v. Tarantino*, 846 F.2d 1384, 1412 (D.C. Cir. 1988), *cert. denied*, 488 U.S. 867, 109 S.Ct. 174, 102 L.Ed. 2d 143 (1988).

Many of the statements made by Branam during his recorded conversation with Naomi Elliott at Brushy Mountain were mere narrative and gossip about the crime and obviously were not made in furtherance of the conspiracy. These included the statement implicating the defendant in the killing and those containing the ambiguous references to “us” and “we” relied upon by the State to bring further statements by Branam and Ernest Walker before the jury. Even those statements made to further conceal the crime, such as his remarks to his aunt about how to mislead law enforcement officials regarding the weapon used in the killing and how he would respond to further interrogation by the police, were inadmissible because they were made long after the offenses had been committed and the primary conspiracy to rob the victim had terminated. Although some jurisdictions, including Tennessee, hold that a conspiracy may continue for the purpose of concealment, the rule that every conspiracy to commit an offense includes an implied subsidiary conspiracy to conceal evidence of the offense has been rejected by several jurisdictions. *See Krulewitch v. United States*, 336 U.S. 440, 69 S. Ct. 716, 93 L.Ed. 790 (1949); *State v. Rivenbark*, 311 Md. 147, 533 A2d 271 (1987). Many courts have stated that admitting co-conspirators’ statements made after achievement of the primary goal of the conspiracy would allow an intolerable expansion of the co-conspirator exception.

It is also apparent that an extension of the co-conspirator exception to include remarks made long after the primary objective of the conspiracy has been reached, raises problems under the Sixth Amendment. *See Bourjaily v. United States*, 483 U.S. 171, 183, 107 S. Ct. 2775, 2783, 97 L. Ed 2d 144 (1987); *Dutton v. Evans*, 400 U.S. 74, 91 S. Ct. 210, 27 L. Ed. 2d 213 (1970); *Horton v. Zant*, 941 F.2d 1449 (11<sup>th</sup> Cir. 1991), *cert. denied*, 503 U.S. 952, 112 S. Ct. 1516, 117 L. Ed. 2d 652 (1992). To avoid these substantial objections, a co-conspirator’s statements made during subsequent efforts at concealment should not be admitted unless they are made at a time proximate to the commission of the principal crime that was the object of the conspiracy. *See People v. Childrous*, 196 Ill. App. 3d 38, 142 Ill. Dec. 511, 520-21, 552 N. Ed. 2d 1252, 1261-1262 (1990); *People v. Eddington*, 129 Ill. App. 3d 745, 84 Ill. Dec. 887, 905, 473 N. E.2d, 103, 121 (1984); *People v. Meagher*, 70 Ill. App. 3d 597, 26 Ill. Dec. 800, 804, 388 N. E.2d 801, 805 (1979)

The defendant refers to this lengthy segment of the *Walker* case due to its critical similarities and importance to his position in this matter.

Defendant Lloyd Ferrell did not testify at trial, nor did he give evidence of statements to law enforcement. The only person testifying regarding defendant Lloyd Ferrell's statements was co-defendant Jason Kimberland. (T.E. Volume I, Pages 75-183). The defendant would submit that Jason Kimberland's credibility was sufficiently attacked at trial. Further, he testified with his case, involving the same charges, still pending. (T.E. Volume I, Page 77). The defendant would argue that Jason Kimberland had sufficient cause to testify in a manner that would benefit himself.

The defendant argues that the error of allowing the statements of co-defendant, Debra Ferrell, to stayce Shands into evidence was prejudicial error. The defendant would once again cite *State v. Walker*, 910 S.W. 2d 381, 411 (Tenn. 1975):

The United States Supreme Court recently imposed a further limitation on excusing constitutional error as harmless. In *O'Neal vs. McAninch*, \_\_ U.S. \_\_, \_\_, 115 S. Ct. 992, 994, 130 L. Ed. 2d 947 (1995). The Court stated:

When a federal judge in a habeas proceeding is in grave doubt about whether a trial error of federal law had "substantial and injurious effect or influence in determining the jury's verdict," that error is not harmless. And, the petitioner must win.

*Id.* at \_\_, 115 S. Ct. At 994. This issue was addressed in the dissent in *State v. Nichols*, 877 S.W. 2d 722, 742 (Tenn. 1994) (Reid, C.J., dissenting):

Errors not rising to the level of a constitutional rights deprivation are judged for harm or prejudice under Rule 52(a) of the Tennessee Rules of Criminal Procedure and Rule 36(b) of the Tennessee Rules of Appellate Procedure. In several important ways, the test for harmlessness of constitutional errors differs from that for nonconstitutional errors. First, once a constitutional error is found, the burden shifts to the state to prove that it is harmless; the burden does not shift to the state for the nonconstitutional errors. Second, the reviewing court must be persuaded “beyond a reasonable doubt” that the error did not affect the trial outcome in order to deem the error harmless — a stricter standard of persuasion than for nonconstitutional error. Finally, a most significant difference is that some constitutional errors never can be deemed harmless, whereas any nonconstitutional error may be considered harmless in a particular case. [James C. Scoville, Comment, *Deadly Mistakes: Harmless Error in Capital Sentencing*, 54 U. Chi.L.Rev. 740, 741-42 (1987).]

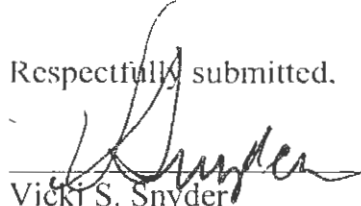
The error committed in this trial by not severing the co-defendant, Debra Ferrell, and or/ allowing co-defendant Debra Ferrell’s statements to Stayce Shands to be admitted as evidence, was a constitutional error that the defendant submits was prejudicial.

In a conspiracy trial, the defendant is entitled to severance on basis of necessity of co-defendant’s testimony only if defendant establishes that the co-defendant would actually testify at defendant’s separate trial. *United States v. Elder* (1996, CA6 Tenn.) 90 F3d 1110, 45 Fed Rules Evidence Serv 113, 35 FR Ser 3d 1470, reh, en banc, 82 A.L.R. 3d 366. Upon review of the entire four volumes of the transcript, there is nothing in the record that indicates that Debra Ferrell will not testify on behalf of her husband, Lloyd Ferrell.

## CONCLUSION

For all of the foregoing reasons, as well as the issues submitted to the Court in the defendant's original brief, the defendant respectfully requests that the judgment of the Trial Court be reversed and dismissed or alternatively, remanded back to the Trial Court for a new trial and/or sentencing hearing.

Respectfully submitted,

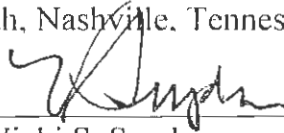


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CERTIFICATE OF SERVICE

I, Vicki S. Snyder, hereby certify that a true and exact copy of the foregoing Reply Brief has been forwarded to John Knox Walkup, Attorney General, State of Tennessee, Criminal Justice Division, 425 Fifth Avenue North, Nashville, Tennessee 37242-0493.



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