

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

**State of Tennessee**

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

Name: Mike A. Little

Office Address: 701 Broad Street, Suite 300,  
(including county) Chattanooga, Hamilton County,  
Tennessee, 37402

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**INTRODUCTION**

The State of Tennessee Executive Order No. 41 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 questionnaire. 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 word processing 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 word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit original (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with electronic or scanned signature via email to [debra.hayes@tncourts.gov](mailto:debra.hayes@tncourts.gov), or via another digital storage device such as flash drive or CD.

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

**PROFESSIONAL BACKGROUND AND WORK EXPERIENCE**

1. State your present employment.

District Public Defenders Office, 11<sup>th</sup> Judicial District, Position: Deputy Public Defender (Executive Assistant).

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

1997, Tennessee Bar No. 018401

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, No. 018401, April 25, 1997, 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).

Lawyer in private practice, Deputy Public Defender and member of the adjunct faculty at the University of Tennessee at Chattanooga.

Prior to law school and during undergraduate school I worked in management for hotel management companies.

During law school I was a bailiff for Hamilton County Criminal Court.

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

Not applicable.

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 Deputy Public Defender, my position is second to the elected Public Defender. Since September of 2014, I have been part of a transition team that took over the office after the current Public Defender won the general election. I have been tasked with implementing vertical representation and overseeing the operation, which includes thirteen other attorneys. Our objective is to provide the best legal representation for those indigent defendants accused of crimes. In my leadership role appointed cases are reviewed and assigned to assistant public defenders. Depending on the type of case, I will either take the lead and/or assign an attorney to the case. Being responsible for training I work alongside assistants and team more experienced attorneys with less experienced ones. Criminal law is the only area of law that I practice, in the Public Defender's Office.

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

Prior to my employment with the Public Defender's Office, I was engaged in private practice for seventeen years. In that capacity I represented more than two thousand people in criminal cases. Of this work I participated in more than sixty state jury trials as lead counsel. In addition I represented approximately sixty defendants and tried five jury trials in federal court. I represented defendants in the following types of criminal cases before a jury: six first degree murder cases, two second degree murder cases, attempt first degree and aggravated assault cases, sex offenses, aggravated robbery, aggravated burglary and theft offenses, hindering secured creditors, conspiracies, one bribery offense, drug trafficking cases, driving under the influence offenses, possession of controlled substances offenses, felon in possession of a weapon and a federal firearm licensing case. I participated in many preliminary hearings before limited jurisdiction courts. I have written and filed pleadings in state and federal courts. Examples of my pleadings would be motions to suppress evidence under the Fourth and Fifth Amendments of the United States and Tennessee Constitutions, motions to sever or join defendants or cases, ex parte motions, motions in limine, motions for new trial, notices of appeal, motions to dismiss in challenging the constitutionality of the law, discovery motions,

memorandums of law to support a motion, sentencing memorandums and appellate briefs. A majority of the pleadings were argued in open court.

I participated in oral arguments before the Tennessee Supreme Court in Knoxville, the Tennessee Court of Criminal Appeals, and the United States Court of Appeals for the Sixth Circuit in Cincinnati, Ohio.

I have negotiated cases with assistants from several different District Attorneys' offices for cases pending in criminal court, circuit court and general session's courts in various Tennessee counties. I also negotiated cases with the United States Attorney's Office in Chattanooga, Knoxville and Washington D.C.

My civil litigation has been limited but I have represented plaintiffs in a wrongful death case, a workers compensation case, limited amount of non-contested divorce cases and less than ten personal injury cases.

I have litigated in administrative hearings in forfeiture cases before the Tennessee Department of Safety Legal Division, student disciplinary action cases before the University of Tennessee at Chattanooga and an employee termination case before the City of Chattanooga City Council hearing panel.

A criminal case requires a full investigation by the attorney. I have interviewed over two thousand clients, several thousand witnesses, and law enforcement officers of all state and federal departments to include local police, sheriff deputies, Tennessee State Troopers, FBI, Secret Service, DEA, and ATF. My investigations have exposed me to crime scenes, many hours of recorded surveillance, voluminous documents, and physical evidence. As a general rule every case required a review of the statutory elements listed in the offense, research of those elements as it related to the facts, and a constitutional review of the issues. The practice of criminal law has required me to keep updated on appellate decisions, both state and federal, especially in matters of criminal procedure, evidence and constitutional issues. Ninety-five percent of my practice has been criminal defense work.

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

I have prepared and tried close to seventy jury trials in state and federal court. This experience has given me insight into all the phases of a jury trial, specifically, the procedure of jury selection, administration of oaths, advance jury instructions, opening statements, presentation of evidence, objections by counsel, hearings outside the presence of the jury, motions, closing arguments, final jury instructions, jury deliberations, questions by the jury during deliberations, delivery of the verdict, sentencing, and motions for new trial.

The criminal trial court accepts or rejects plea agreements. I have stood by thousands of clients who have entered guilty pleas in state and federal courts. Whether in a jury trial or a plea agreement announcement the process does not always go as planned by either the prosecutor or the defense. I have observed that the experience of the judicial applicant and his or her understanding of judicial temperament best suit the impartiality of the court.

My experience with appeals from trial court to the appellate court has heightened my respect for the importance of the trial court record. The court is responsible to ensure that evidence is properly introduced and identified as an exhibit, that conclusions of law are stated when the law requires it to be, that plea agreements are accepted pursuant to authority, in that defendants' rights are explained and the court insures that it is accepting a knowing and voluntary guilty plea.

At times there are different burdens depending on the court or the issue. The administrative bodies are civil in nature and the plaintiff has to meet the burden of by a preponderance of the evidence, whereas in criminal court the jury must find guilt beyond a reasonable doubt or a criminal court judge, as a fact finder in determining issues of law in pretrial motions, has to apply different burdens such as totality of the circumstances, clear and convincing evidence, or probable cause for example. Of course the appellate courts have set standards of review.

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

I have served as a special judge on many occasions in the following courts in Hamilton County for an absent elected judge on a limited basis: City Court of Chattanooga, City Court of Red Bank, City Court of Soddy Daisy and Hamilton County General Sessions Court. As a special judge I have accepted plea bargains, granted and denied motions, signed judgments of conviction, ordered sentences into execution, presided over bench trials, probation revocations and traffic dockets. In all these occasions I was sworn in as a special judge only for the day. I served when asked during my seventeen years in private practice.

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

Early in my career I was appointed guardian ad litem to an infant born addicted to a drug (cocaine) because the birth mother abused the drug. This appointment lasted for close to three years. I monitored the child's growth and development through the foster parents and made reports in court appearances.

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

While in law school I worked as a bailiff in Hamilton County Criminal Court where I observed hearings and jury trials. I worked for Judges Joseph DiRisio, Russell Hinson, Gary Gerbitz and Rebecca Stern. As an adjunct faculty member at the University of Tennessee at Chattanooga I taught a class titled "The Legal Environment of Business" from 2007 to 2012. It was a junior/senior level class. The class was designed to expose the student to ethical and legal issues concerning business decisions. We covered ethics, the state and federal court systems, constitutional law, criminal law and procedure, torts, contracts, agency, partnerships, corporations, intellectual property, alternative dispute resolution, and employment discrimination.

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 commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

I have never submitted an application to the Governor's Counsel for Judicial Appointments or any predecessor commission or body.

### EDUCATION

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

August 1992 to June 1996	Nashville School of Law, Doctor of Jurisprudence.
January 1977 to May 1992	University of Tennessee at Chattanooga, Art Education Major for two years before changing to Accounting concentration. Received Bachelor of Science in Business Administration-accounting major. Note: At times I was a part-time student, a full time student and depending on demands in the hotel management business I would take off semesters.
June 1979 to December 1980	Chattanooga State Technical Community College Transferred.

**PERSONAL INFORMATION**

15. State your age and date of birth.

Age: 56      Date of birth: May 5, 1958.

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

56 years.

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

39 years.

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

Hamilton County.

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

Not applicable.

20. Have you ever pled guilty or been convicted or are you now on diversion for violation of any law, regulation or ordinance? Give date, court, charge and disposition.

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 state and provide relevant details regarding any formal complaints 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.

Not Applicable.

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.

Yes.

I was a defendant in a landlord tenant dispute. The case was dismissed in 1978 after a bench trial in Hamilton County General Sessions Court. Records of this lawsuit are not available from the clerk.

I was a defendant in a vehicle accident case filed in Hamilton County Circuit Court, case number N-31259. The case was settled for \$1400. The order of dismissal was filed on April 8, 1986.

I was a defendant in a divorce case in Hamilton County Circuit Court. Final order was entered on August 30, 1993. We signed a marital dissolution agreement. The case number was 93DR1482.

I was one of three defendants in a landlord dispute filed in Hamilton County General Sessions Court. I settled my portion of the case for \$1,500 and the case was dismissed. The lawsuit was filed on January 25, 1999, and the case number was 439091.

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.

Hamilton County Republican Party Delegate.

Knights of Columbus Counsel No. 14079.

3<sup>rd</sup> Degree Member.

Officer: Advocate.

Harrison Ruritan Club - Associate Member.



Chattanooga Area Soap Box Derby Club – Volunteer.

Holy Spirit Catholic Church - Soddy Daisy, Tennessee.  
Team Captain for Offering Collection Counters.

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.
- If so, list such organizations and describe the basis of the membership limitation.
  - If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No.

#### ACHIEVEMENTS

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

Chattanooga Bar Association – 1997 to 2015.  
National Association of Criminal Defense Lawyers – 2008 to 2015.  
Tennessee Association of Criminal Defense Lawyers – 1997 to 2015.  
Chattanooga Association of Criminal Defense Lawyers – 2008 to 2015 - Founding member.

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.

As a Criminal Justice Act (CJA) Panel Attorney I was placed on the three-year term panel which is the highest recognition for panel attorneys.

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.

Trial Strategy, CLE seminar 1.5 hours - presented to the Chattanooga Association of Criminal

Defense lawyers.

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.

Election candidate for Judge for City of Soddy Daisy, Tennessee in 2012.

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

No.

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

Attached are four court room pleadings that are my sole work.

#### ESSAYS/PERSONAL STATEMENTS

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

It is important to become involved in your community. One way is to step into local government and for me, because of my legal experience; the judicial branch is the natural choice. The position requires someone with experience, integrity, knowledge of the law and an understanding of judicial temperament. I have gained valuable experience working in the legal profession and believe that experience would suit me well as a criminal court judge. I want to help serve my community in a way that will hopefully maintain the respect of the community for the courts and the law. And for this reason I am seeking the position.

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)*

I was a founding member of the Chattanooga Association of Criminal Defense Lawyers established for the purposes of addressing local issues in our profession as a collective body. I have always accepted state and federal court appointed cases when asked even when my private practice became successful. Many times complex cases arise that necessitate the need for a more experienced lawyer to be appointed. I have seen pro se criminal defendants receive unequal justice in general session's courts and have taken an active role in pro bono work to correct the injustice. I have represented criminal defendants pro bono on a selective basis throughout my career. Recently I closed my successful private practice to accept a position in the District Public Defenders Office under a newly elected Public Defender to reorganize the office and train lawyers to represent indigent defendants.

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)*)

Hamilton County Criminal Court has concurrent jurisdiction with circuit court. It is a trial court and a court of record. Criminal court also has appellate jurisdiction on appeals from general sessions courts as well as all municipal courts in Hamilton County. Criminal Court Division II also has a drug court that receives a federal grant to administer and has to date been successful. There are three divisions of criminal court in Hamilton County each staffed with one judge. Criminal offenses, felonies and misdemeanors, alleged to have occurred in Hamilton County indicted by the Hamilton County Grand Jury are equally distributed to the three divisions of criminal court. I hope that the impact of my selection would be to continue the integrity and independence of the court and to perform the duties without fear or favor.

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 have spent time volunteering in community endeavors as a past member of the Jaycees and the Downtown Kiwanis Club. As member of the Jaycees I was involved in promoting and coordinating blood donations for Blood Assurance. Later as member of the Kiwanis Club I was a volunteer for the annual TV Auction that raised money for the Northside Neighborhood House, a charitable organization for the local community and we also went to inner city schools to speak to students on career days.

I served as president of my son's high school basketball booster club. We raised money for equipment and camps. Recently I have volunteered for the last two years at the local Soap Box Derby Race where children from ages 7 to 18 compete.

I have been involved in the construction of two homes with Habitat for Humanity.

In my volunteer work for the Knights of Columbus I co-chaired fundraisers for our local mentally challenged facility, Orange Grove and for families in need. I would like to take a more active role in the Chattanooga Bar Association and when given the opportunity I would like to speak to various community organizations about the legal profession.

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

I was born and raised in Knoxville, Tennessee, before living with my grandmother in Newport, Tennessee, during high school. I worked my way through school. I was the first in my family to graduate from college. My greatest life experience is being a husband, and father to my three children. My occupation as a criminal defense lawyer has brought me many experiences in the office, the courtroom and in the field. I was a candidate in a local municipal race for city judge that involved nine other candidates. The experiences from talking to people in our small city helped me to better understand our community. I ended up running second in the election.

In the past I have benefited spiritually and mentally from my involvement with groups such as Promise Keepers, Sunday school classes and bible studies. My present work with my local church Knights of Columbus counsel has been rewarding.

I do not like to boast or bring attention to myself. I have been involved in many high profile cases and the temptation to grandstand is always present. I cannot always avoid the press but I can control what I say. Colleagues have questioned me about this avoidance of the press, because it is considered free advertising. The few times that I did give interviews I felt it was appropriate.

I believe that I am a good listener with patience and that I have acquired positive people skills. I am able to get along with most anybody despite our differences.

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

Yes, a trial judge takes an oath to uphold the law. Therefore, it is not his or her function to change the law. Because criminal law in Tennessee is codified and updated regularly there is always something to disagree about whether you are a prosecutor, a defense attorney, judge or layperson. The key for a judge is to recognize his or her role, which is to apply the law.

I have often felt in certain circumstances that the federal sentencing guidelines are too harsh. As defense counsel in federal court, I presented arguments to the court at sentencing hearings to oppose harsh sentences but always had to acknowledge that the law was clear and I would have to concede that the sentencing range was lawful even though I personally disagreed with it. Disagreeing with the federal sentencing laws did not prevent me from advising my clients what was in their best interest.

**REFERENCES**

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Council or someone on its behalf may contact these persons regarding your application.

A. Gary Gerbitz, Hamilton County District Attorney (Ret.), Miller & Martin
B. Bill Cox, Hamilton County District Attorney (Ret.)
C. Paula Thompson, Hamilton County Circuit Court Clerk (Ret.)
D. Terra Bay, Assistant United States Attorney
E. Chief Deputy Allen Branum, Hamilton County Sheriff's Department

**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 Hamilton County Criminal Court Division II, 11<sup>th</sup> Judicial 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 questionnaire with the Administrative Office of the Courts for distribution to the Council members.

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

Dated: February 20, 2015.



\_\_\_\_\_  
Signature

When completed, return this questionnaire to Debbie Hayes, 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.

Mike A. Little

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

  
\_\_\_\_\_  
Signature

February 20, 2015

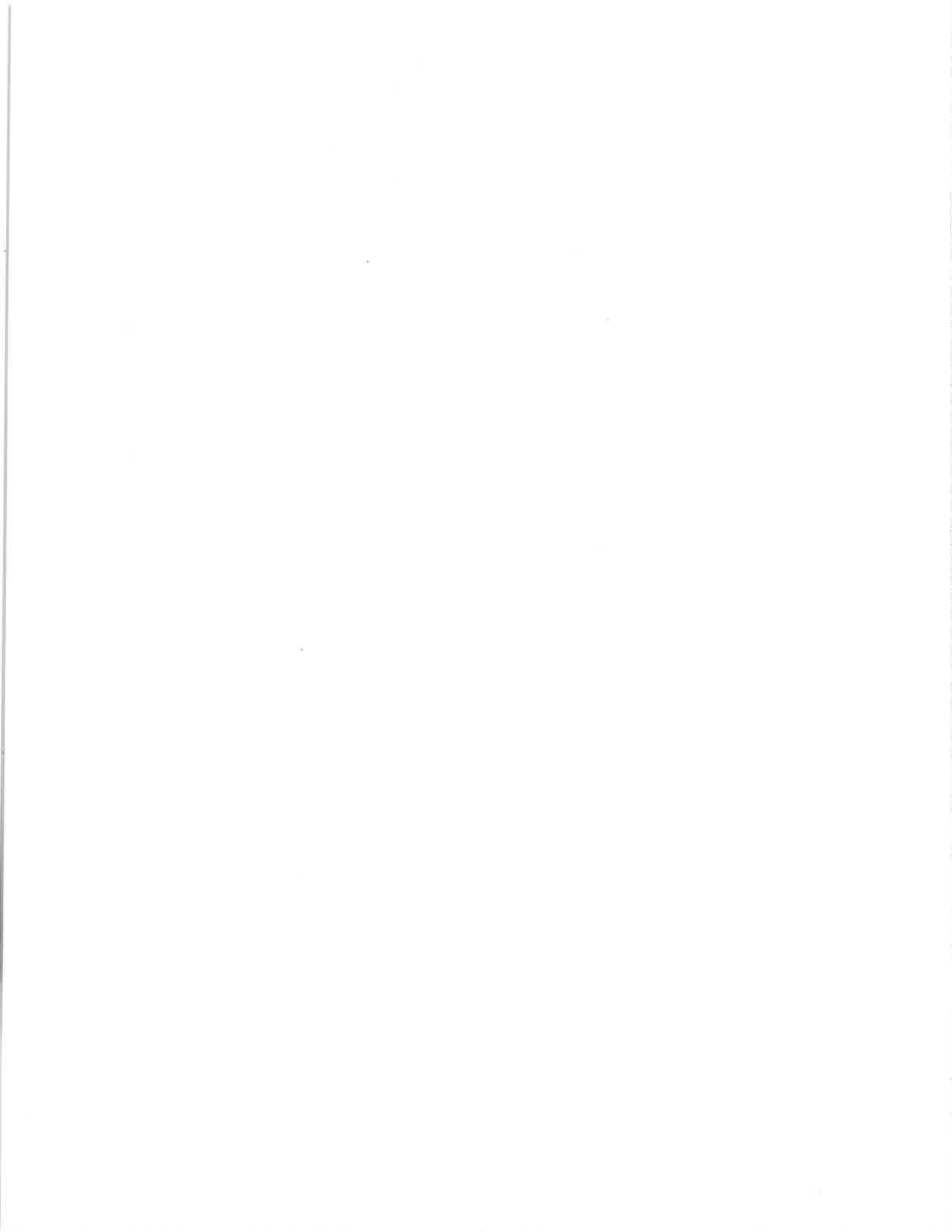
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BPR #

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

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

UNITED STATES OF AMERICA                   :                   CASE NO. 1:13-CR-42  
V.   :                     
ROBERT BARRY COLE                         :                   JUDGE COLLIER

**SENTENCING MEMORANDUM**

**Procedural History**

Mr. Cole entered a plea guilty to a Criminal Information charging one count of Gambling Business in violation of Title 18 U.S.C. Section 1955. In addition he agreed to a forfeiture amount of \$36,520. Sentencing is set before this Court on January 9, 2014.

**Sentencing Guidelines**

According to the Presentence Investigation Report the base offense level in this case is twelve (12), with one sentencing enhancement of three (3) levels resulting in an adjusted offense level of fifteen (15). After a two (2) level decrease for acceptance of responsibility the total offense level is thirteen (13). At the age of 53, Mr. Cole has no prior criminal convictions. Therefore, with a criminal history of I, the advisory guideline range is twelve (12) to eighteen (18) months of incarceration followed by a term of not more than three years of supervised release. The applicable guideline range is in Zone C of the Sentencing Table, therefore, the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention, provided that at least one-half of the minimum term is satisfied by imprisonment. *See* USSG Section 5C1.1(d).



When sentencing an individual, this Court first determines the proper guideline calculation. Mr. Cole has filed no objections to the above calculation.

**Application of 18 U.S.C. Section 3553(a)**

Consideration of the factors of 18 U.S.C. § 3553(a) supports the imposition of a sentence below the guideline range in this case. The district court must consider the sentencing guideline range and all relevant factors identified in section 3553(a). *United States v. Jones*, 445 F.3d 865, 869 (6th Cir. 2006). Failure to consider the statutory sentencing factors under section 3553(a) creates a sentence that may be procedurally unreasonable and substantively unreasonable. *United States v. Collington*, 461 F.3d 805, 808 (6th Cir. 2006). "[A] district court's job is not to impose a 'reasonable' sentence. Rather, a district court's mandate is to impose a 'sentence sufficient but not greater than necessary, to comply with the purpose of section 3553(a)(2).'" *United States v. Wilms*, 495 F.3d 277, 281 (6th Cir. 2007).

In imposing a sentence the court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of 18 U.S.C. Section 3553(a). The sentencing court shall consider the following §3553(a) factors: (1) the nature and circumstances of the offense and the defendant's history and characteristics; (2) the need for the sentence imposed – (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the sentencing ranges; (5) policy statements; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution. 18 U.S.C. § 3553(a). After a party is given the opportunity to argue for an appropriate sentence, "the district

judge should then consider all of the §3553(a) factors to determine whether they support the sentence requested by the party." *Gall v. United States*, 552 U.S. 38, 49-50 128 S. Ct. 586, 596 (2007). In this case the defendant submits that the relevant statutory factors under 18 U.S.C. § 3553(a) support a downward variance from the sentencing guidelines.

### **I. 18 U.S.C. § 3553(a)(1)**

#### **A. Nature and Circumstances of the Offense**

The nature and circumstances of the offense do not warrant a guideline sentence and any prison time would be greater than necessary. The defendant moves the Court to grant a downward variance after taking into consideration the nature and circumstances of the offense.

Mr. Cole became involved in Mike Killian's gambling business in 2002. For 10 years Mr. Cole accepted gambling bets on sports games from people in the community. The winners were paid directly by Mr. Cole or he left the money in envelopes at Mr. Killian's store for pick up. For three months in 2012 Mr. Cole also used an online gambling site for sporting bets at the direction of Mr. Killian. The proceeds of the sports gambling were split between the two men. Mr. Cole was not involved in the gambling business prior to 2002 nor was he involved in the "outlaw lottery" or the video gaming machines operated by Mr. Killian.

The FBI investigation into Mr. Cole's gambling offense did not turn up other crimes normally associated with gambling enterprises such as drug trafficking, violence, or prostitution. On the contrary, Mr. Cole conducted a safe, although unlawful, operation, wherein consenting adults in the community placed wagers on ballgames. This statement is not meant to justify or excuse Mr. Cole's behavior but to set it apart from other gambling enterprises in the country that involve racketeering.

#### **B. History and Characteristics of the Defendant**

"No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." 18 U.S.C. § 3661. Section 3661 has been "narrowly interpreted as a safety net of sorts . . . allowing district courts to consider any relevant information not already taken into consideration by the Guidelines." *United States v. Phelps*, 366 F. Supp. 2d 580, 591 (E.D. Tenn. 2005). "The Court will entertain arguments for a non-Guidelines sentence premised on any considerations except race, sex, national origin, creed, and religion but only to the extent such considerations are relevant to one or more of the purposes of sentencing enumerated in § 3553(a)(2)." *Id.* at 594.

Mr. Cole has submitted a personal letter along with eleven characters letters from people in his community which are attached hereto.

Mr. Cole wrote:

It is with much regret that I am before the [court] accepting responsibility for my actions. I made a bad decision by getting involved in the gambling business. I allowed myself to get caught up in this and did not consider the consequences. I never intended for it to become a way of life.

I have changed my lifestyle and disassociated myself from certain people.

Letter from Shawn Henson, friend:

I know from numerous conversations with Mr. Cole that he fully regrets not only the situation he finds himself in, but also the actions that got him there. He got involved in this situation at a time when the business where he had been employed for many years was going under and despite his hard work, he was finding himself without gainful employment. I truly believe that if he found himself in the same situation again, he would not make the same decision.

Letter from Kim Lappin, employer:

[Mr. Cole] did tell me the whole story of this situation and what he is up against. I know what he is facing and I do trust him not to ever participate in any way with what has brought him to this point. I have always known Barry to be a good man. He

is an honest, dependable, trustworthy person. He needs a chance to repay society by working and living in our community. He has a lot to offer, and needs a chance.

Letter from Leslie Jackson, Souvenir Chairperson, National Cornbread Festival:

In addition to his civic duties, I personally have known Mr. Cole for most of my life. He is a man of genuine concern for others and an active caretaker for his widowed mother.

It is with my sincere pleasure to testify to Mr. Cole's true nature of being a kind, considerate and community minded person always extending himself to and for the good of others.

Letter from Angela Hampton, friend of 25 years:

As previously stated [Mr. Cole] is a true, loyal and dedicated friend. I feel as though this quality, in part, is the reason he is in this situation. He made a bad decision and I feel he is deeply ashamed of himself for what he did. I can't say enough how good and decent this man is.

Letter from Hilary C. Hamm, Mr. Cole's sister:

Barry is six years older than I am and has always been a very important part of my life. I cannot remember a time when my brother has not been there when I needed him. He is the most dependable person I know. Barry is the person in my family we turn to when there is a problem. When I found myself as a single mother, he often helped pick up my son from school or football practice. When our oldest brother had a heart attack, Barry was the first one there. When our father passed away, he helped our mother with everything she needed. He helps out mother in so many ways. Barry is the backbone of our family, and we all turn to him for guidance and support.

He has apologized to our family for the pain and embarrassment that he feels he has caused.

Letter from Randy Cole, Mr. Cole's brother:

Barry has accepted a job at a long standing business in South Pittsburg. The company offered him a position without him asking for it. I think this is one example of many that I could cite, of people willing to help him without question, because of the type of person he is.

All of the letters submitted by family, friends and coworkers describe the positive character and integrity of Mr. Cole. They show that he is a leader in his family, a volunteer in the community and an excellent employee. The court should consider Mr. Cole's history as a son, brother,

community volunteer, and employee.

**(1) Employment History**

According to the Presentence Investigation Report, prior to Mr. Cole's entry into the gambling business he was continually employed in the community for 15 years. Mr. Cole also sold fireworks during the holidays during the time period he was involved in the gambling business.

After Mr. Cole entered a plea of guilty to the illegal gambling offense he was hired by H.J. Walker Oil Company, a division of Exxon/Mobil as a salesperson. The CEO and President of the company was fully aware of Mr. Cole's gambling case in federal court. Since the hire date of September 2013, the company has sent Mr. Cole to an out of town training session, put him through webinars and company representatives have spent time familiarizing him with company products. The company will be enrolling Mr. Cole soon in training sessions scheduled for 2014. Mr. Cole will be able to receive health, vision, and dental insurance, and a retirement plan.

Mr. Cole is receiving on the job training at the cost of the company. This would indicate that the company intends to employ Mr. Cole for an extended period of time. The court should consider Mr. Cole's present employment.

**II. 18 U.S.C. § 3553(a)(2)**

18 United States Code section 3553(a) provides that the court shall impose a sentence that is sufficient but not greater than necessary. Section 3553(a)(2) requires the Court to consider:

- (2) the need for the sentence imposed –
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;
  - (C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2).

**(A) 18 U.S.C. § 3553(a)(2)(A) - To Reflect the Seriousness of the Offense, To Promote Respect for the Law, and to Provide Just Punishment for the Offense**

This offense was a nonviolent offense. Congress has provided "that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense, and the general appropriateness of imposing a term of imprisonment on a person convicted of a crime of violence that results in serious bodily injury." 28 U.S.C. § 994(j). Mr. Cole has agreed to forfeit all of the cash, diamond ring and computers that were seized from his home. He was introduced into the gambling business by a friend at a time when his employment outlook was weak.

Prior to Mr. Cole entering a plea of guilty to illegal gambling he did not have a criminal record. Now he has to face life with a felony conviction and has endured humiliation and embarrassment in his community among his family and friends. This is significant punishment for someone who is 53 years old. A punishment that could better benefit society, while still recognizing the seriousness of the offense, could be met with probation, home confinement, or community service. A guideline sentence would be greater than necessary.

**B. 18 U.S.C. § 3553(a)(2)(B) - To Provide Adequate Deterrence to Criminal Conduct**

The purpose of general deterrence and specific deterrence do not require that a guideline sentence of imprisonment be imposed. Deterrence is only one of the sentencing considerations under § 3553(a)(2). Courts have considered both general and specific deterrence. *United States v. Turner*,

173 Fed. Appx. 402, 408 (6th Cir. 2006) (citing *United States v. Barbara*, 683 F.2d 164, 167 (6th Cir. 1982)). "General deterrence of criminal conduct dictates that a clear message be sent to society that repeated criminal behavior will aggravate the need for punishment with each recurrence." *United States v. Light*, No. 96-5482, 1997 WL 720386, (6th Cir. 1997). Mr. Cole has no criminal history, and therefore no repeated behavior to aggravate the need for punishment.

Mr. Cole has admitted in his letter that he is embarrassed, ashamed and sad which has led to feelings of depression. He had to sit with his mother and apologize. He has encountered several people in his community and has had to discuss his embarrassment and guilt. He has admitted to changing his life style. He knows that he is facing a prison sentence, an experience that he has never had before.

Mr. Cole has every reason not to reoffend.

**C. 18 U.S.C. § 3553(a)(2)(C) - Protect the Public from Further Crime**

Mr. Cole is not a threat to the public. He has the respect of people in his community, and his family. After Mr. Cole entered a plea of guilty, a local company hired him. The CEO and president of H. J. Walker Oil Company, Inc. made that decision based on Mr. Cole's character and integrity. They have already invested money in his training. At the age of 53 he had no criminal history.

A sentence of imprisonment would be a waste of taxpayers' money and would add to the overcrowding of the prison system in this Country. The overcrowding in the prison system was addressed in *Brown v. Plata*, 131 S. Ct. 1910, 1932-33 (2011) (holding that evidence supported a finding that overcrowding was the primary cause of Eighth Amendment violations and hampered medical care in the California prison system). The prison space should be reserved for those who are dangers to the community or are repeat offenders that have proven that an alternative to incarceration is insufficient. Mr. Cole is already showing that he can be a productive member of society. His

presence in the community would benefit the system. Through his new job he can support himself, cover his medical needs, and pay his taxes. In addition he can continue to care for his mother and be a support for his siblings. Mr. Cole has been on pretrial release without any problems. It would be difficult for Mr. Cole to emerge from prison in two years at the age of 55 and to be similarly situated.

**D. 18 U.S.C. § 3553(a)(2)(D) - To Provide the Defendant with Needed Educational or Vocational Training, Medical Care, or Other Correctional Treatment in the Most Effective Manner**

Mr. Cole is currently receiving on the job training. The training will continue into next year 2014. This training is not at the expense of taxpayers'. Mr. Cole does not require drug or mental health treatment. This factor does not support a guideline range sentence or imprisonment.

**III. 18 U.S.C. § 3553(a)(6) - The Need to Avoid Unwarranted Sentence Disparities Among Defendants with Similar Records Who Have Been Found Guilty of Similar Conduct**

The need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct does not require a guideline sentence. This subsection is concerned with national uniformity of defendants' sentences with similar criminal histories and similar criminal conduct. *United States v. Simmons*, 501 F.3d 620, 622 (6th Cir. 2007). The Court should also consider the need to avoid unwarranted similarities among defendants who are not similarly situated. See *Gall*, 552 U.S. at 55-56, 128 S. Ct at 600. "While uniformity remains an important sentencing goal, Booker recognized that some departures from uniformity were a necessary cost of the remedy that decision adopted." See *Kimbrough v. United States*, 552 U.S. 85, 88, 128 S. Ct. 558, 574 (2007).

Defendants charged with similar conduct may be significantly different from Mr. Cole. It is very likely that Cole is not similarly situated to most other defendants. A guideline sentence in this



case would fail to avoid unwarranted sentence similarities with other defendants who are not similarly situated to Cole. He is a 53 year old man, with no criminal history, and is gainfully employed. These factors warrant a below the guideline sentence and give the Court sufficient reason and justification for varying or departing from the guideline range.

### CONCLUSION

The defendant submits a sentence that will be sufficient but not greater than necessary is a sentence below the sentencing guideline range in this case or even a sentence of probation. This Court has the discretion to impose any sentence that it believes is reasonable after evaluating the §3553(a) factors. See *Gall v. United States*, 552 U.S. 38, 128 S. Ct. 586 2007 (holding that extraordinary circumstances are not necessary for a sentence outside the guideline range).

Respectfully submitted, this 23rd day of December, 2013.

Mike A. Little /s/  
Mike A. Little, BPR #018401  
Attorney for Defendant, Cole  
701 Cherry Street, Suite 200  
Chattanooga, Tennessee 37402  
423-267-5972

### CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing document has been duly served upon United States Attorney's Office, 1110 Market Street, Suite 301, Chattanooga, Tennessee 37402, either by electronic filing, hand delivery, or by placing a copy of the same in the United States Mail, properly addressed with sufficient postage affixed thereto to carry the same to its destination.

This 23<sup>rd</sup> day of December, 2013.

/S/ Mike A. Little  
MIKE A. LITTLE



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

<b>UNITED STATES OF AMERICA</b>	)	
	)	<b>Case No. 1:05-CR-37</b>
<b>V.</b>	)	<b>JUDGE CARTER</b>
<b>TYSHAWN HILL AND RONDRELL SANFORD</b>	)	

**MOTION TO SUPPRESS**

Comes now Defendant, Rondrell Sanford, by and through appointed counsel, Mike A. Little, and respectfully requests this Honorable Court to suppress statements and evidence in this cause, showing the Court as follows:

The defendant was arrested on February 25, 2005 following a traffic stop by a McMinn County, Tennessee police officer. Defendants Hill and Sanford were denied pre-trial bail and were federally indicted on March 22, 2005 for possession of cocaine and conspiracy to possess more than five kilograms of cocaine.

In his Memorandum of Law in Support of Motion to Suppress, which has been filed contemporaneously with the instant pleading, Defendant Sanford presents the below questions (in a declarative format) with supporting authorities and facts adduced through discovery.

Whether the traffic stop was supported by reasonable suspicion?

Whether the officers had reasonable suspicion to justify the prolonged detention?

Whether the continued detention became an arrest, requiring probable cause to believe that a crime was being committed or had been committed?

Defendant moves that the Court hold an evidentiary hearing on the above questions and, as required by law, suppress the fruits of any illegally obtained evidence.

WHEREFORE, Defendant Sanford respectfully prays this Honorable Court hold an evidentiary hearing on the above questions.

Respectfully submitted this 3<sup>rd</sup> day of May, 2005.

s/ Mike A. Little  
MIKE A. LITTLE, BPR #18401  
Attorney for Defendant, Rondrell Sanford  
701 Cherry Street, Suite 200  
Chattanooga, Tennessee 37402  
(423) 267-5972

#### **CERTIFICATE OF SERVICE**

I hereby certify that on May 3, 2005, a copy of the foregoing Motion To Suppress was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

s/ Mike A. Little  
MIKE A. LITTLE, BPR #18401  
Attorney for Defendant, Rondrell Sanford  
701 Cherry Street, Suite 200  
Chattanooga, Tennessee 37402  
(423) 267-5972

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

**UNITED STATES OF AMERICA**

)

)

**Case No. 1:05-CR-37**

**V.**

)

**JUDGE CARTER**

**TYSHAWN HILL AND  
RONDRELL SANFORD**

)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SUPPRESS**

Comes now Defendant, Rondrell Sanford, by and through appointed counsel, Mike A. Little, and files this Memorandum of Law in Support of Motion to Suppress, showing the Court as follows:

**STATEMENT OF THE FACTS**

On Friday, February 25, 2005 just before 6:00 p.m., Officer Kenneth Pruitt of the McMinn County Sheriffs Department was heading north on interstate 75 when he made a traffic stop of a 2001 Buick Regal. In the police report, Officer Pruitt writes that the Buick was allegedly following too close to a tractor trailer. Upon making the stop, Officer Pruitt approached the Buick and asked the driver for his drivers license and registration. These materials were promptly provided by the driver, Tyshawn Hill. Hill was then asked to exit the car and directed to stand at the rear of his vehicle. He readily complied with this directive at which point Officer Pruitt informed Hill of the reason for his stop.

Officer Pruitt apparently interviewed Hill, asking him about matters unrelated to the stop. For reasons unknown, Officer Pruitt then separately interviewed the passenger, Rondrell Sanford. Their respective "stories", Officer Pruitt concluded, were inconsistent. Consequently, Officer Pruitt radioed for "K-9 Officer Johnson". Officer Pruitt asked Hill for consent to search the car and according to Officer Pruitt, Hill gave his consent. Officer Johnson, it appears, arrived sometime after

Hill gave this consent.

Following his consent, Officer Johnson began searching the Buick. As this was transpiring, Officer Pruitt was monitoring Hill and Sanford, noticing how they look at one another “in a very concerned and nervous manner” as the search began. Moments later, Hill “bolted across the interstate on foot.” Officer Pruitt was unable to pursue Hill because of the heavy traffic. Aware of Hill’s flight, Officer Johnson secured Sanford and a short time later, resumed the K-9 search of the car. The dog alerted on a suitcase in the backseat. Inside, the officers found eight kilograms of cocaine and \$2,160.00 in cash.

Next, Seargeant Walker and Deputy Levi arrived on the scene and secured the car and the cocaine. Officer Johnson with his K-9 “Brondo” and Officer Pruitt then began tracking Hill. After two or three miles, Brondo apprehended Hill.

### **ARGUMENT AND CITATIONS TO AUTHORITIES**

Based on the above facts, Defendant Sanford makes the following claims and asks the court to suppress the fruits of any illegality, including statements made by Sanford, the contents of the car, and those items on his person at the time he was arrested.

- a. The traffic stop was not supported by reasonable suspicion and was, accordingly, an illegal stop/detention/seizure

Under the Fourth Amendment, police officers may briefly stop an individual if they have “reasonable suspicion” that he has committed a crime. In *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the Supreme Court first stated that “the police should be allowed to ‘stop’ a person and detain him briefly for questioning upon suspicion that he may be connected with criminal activity.” *Id.* At 10, 88 S.Ct. 1868. “[I]n justifying the intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from

those facts, reasonably warrant that intrusion.” *Id.* at 21, 88 S.Ct. 1868. The reasonable suspicion standard requires that “an officer making a *Terry* stop must have more than a hunch” that criminal activity is occurring, but “considerably less than proof of wrongdoing by a preponderance of the evidence. *United States v. Hurst*, 228 F.3d 751, 757 (6<sup>th</sup> Cir. 2000)(citing *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581 (1989)); *Houston v. Clark County Sheriff*, 174 F.3d 809, 813 (6<sup>th</sup> Cir. 1999); *United States v. Freeman*, 209 F.3d 464 (6<sup>th</sup> Cir. 2000)(police did not have probable cause to believe the motorist was driving while intoxicated or that he committed other traffic infraction); see *Gaddis v. Redford Township*, 364 F.3d 763, 770 (6<sup>th</sup> Cir. 2004)(clarifying any dispute created by *Freeman*, *supra*, that reasonable suspicion justifies a brief traffic detention).

Defendant Sanford maintains that no traffic infraction or act in a manner to create reasonable suspicion of criminal activity was committed. Moreover, Officer Pruitt’s police report presents only scant facts to justify this stop; the police report summarily recites that Defendant Hill was following too close. Given the evident questions of fact, Defendant Sanford requests an evidentiary hearing on this claim as well as the opportunity to submit evidence in support thereof.

- b. The Officers detained Defendant Sanford longer than was reasonably necessary to issue the traffic citation but lacked reasonable suspicion to justify the prolonged detention.

The Fourth Amendment is implicated once an individual has been “seized,” that is once an individual is no longer “free to leave.” *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 641 L.Ed.2d 497 (1980); *INS v. Delgado*, 466 U.S. 210, 104 S.Ct. 1758, 80 L.Ed.2d 247 (1984); *Michigan v. Chesternut*, 486 U.S. 567, 108 S.Ct. 1975, 100 L.Ed.2d 565 (1988). “A ‘seizure’ occurs . . . when the police detain an individual under circumstances where a reasonable person would feel that he or she is not at liberty to leave.” *United States v. Butler*, 223 F.3d 368, 374 (6<sup>th</sup> Cir. 2000);

see *United States v. Avery*, 137 F.3d 343, 352 (6<sup>th</sup> Cir. 1997)(noting that a “seizure” for the purposes of the Fourth Amendment comprises either a **Terry** investigative detention requiring “reasonable, articulable suspicion of criminal activity” or an arrest requiring probable cause.”)

In determining whether a seizure has occurred, the test is whether, in view of all the surrounding circumstances, a reasonable person would have believed they were not free to leave. *Michigan v. Chesternut*, *supra*; *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)(retention of traveler’s plane ticket and identification amounted to an arrest). Of course, there is no dispute that law enforcement permitted to order a defendant out of the car during a routine traffic stop. See *Maryland v. Wilson*, 519 U.S. 408, 413-414, 117 S.Ct. 882, 137 L.Ed.2d 141 (1997).

Here, the limited information set forth in the police report creates substantial question as to whether the officers unreasonably prolonged his detention without reasonable suspicion that a crime was committed or was being committed. Given the evident questions of fact, Defendant Sanford requests an evidentiary hearing on this claim as well as the opportunity to submit evidence in support thereof.

- c. The Officer(s) unjustified detention became an arrest, which was not supported by probable cause.

Probable cause to arrest exists when law enforcement officers have facts and circumstances within their knowledge sufficient to warrant a reasonable belief that the suspect had committed or was committing a crime. *Beck v. Ohio*, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964).

Here, from the limited information contained in the police report, it readily appears that Sanford was not free to leave the scene and may, in fact, have been under arrest. If so, the police report does not on its face present facts rising to the level of probable cause. Without Probable cause



and presuming Sanford was 'not free to leave,' this was an illegal arrest; and the fruits of this illegality must be suppressed. Given the evident questions of fact, Sanford requests an evidentiary hearing on this claim as well as the opportunity to submit evidence in support thereof.

### CONCLUSION

WHEREFORE, Defendant Sanford prays this Court: a.) hold an evidentiary hearing on the above enumerations so that Sanford may present proof in support of his claims; b.) direct the government to present any and all evidence in its custody/control which bears on the above-issues; and c.) suppress any evidence obtained in violation of the Constitution of the United States of America.

Respectfully submitted, this 3<sup>rd</sup> day of May, 2005.

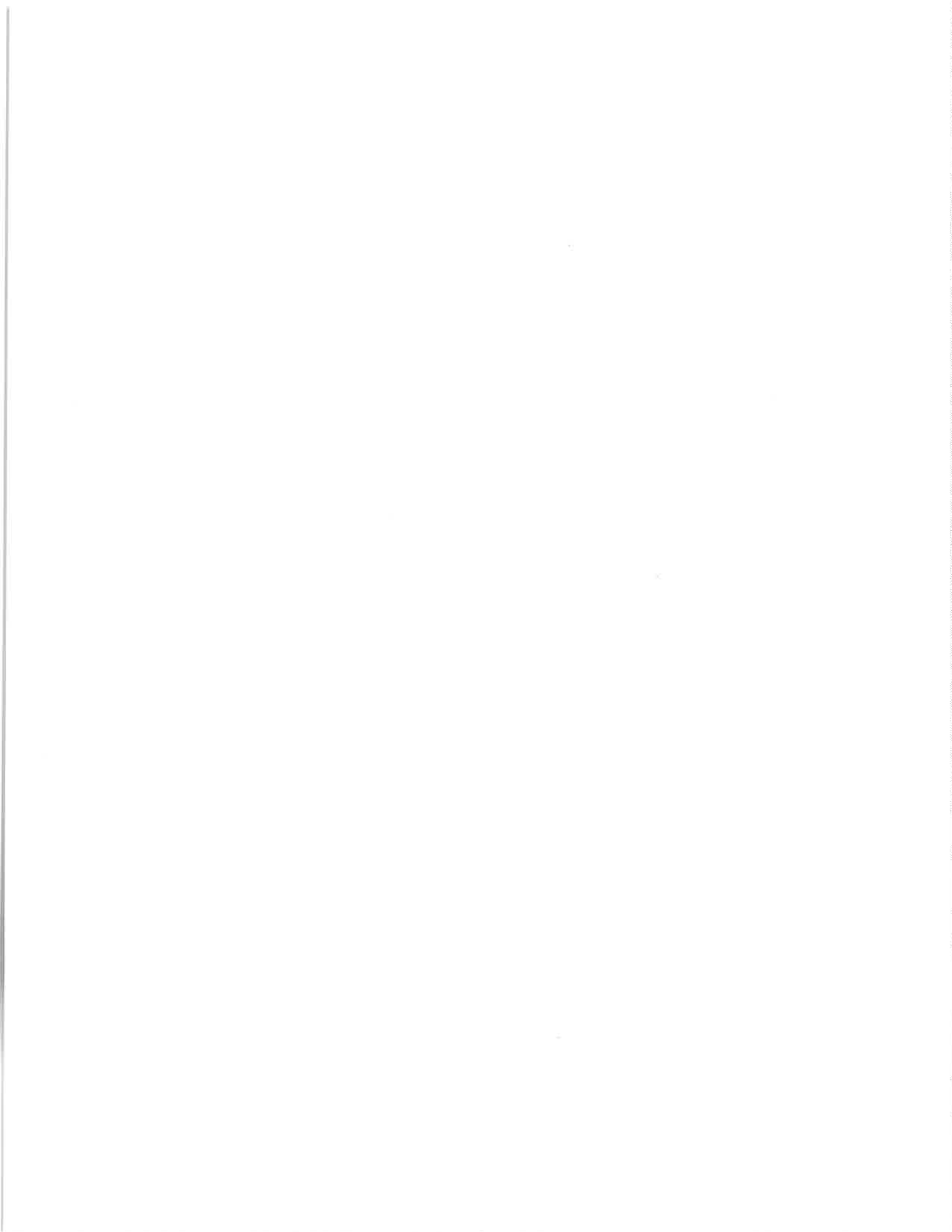
Respectfully submitted,

s/ Mike A. Little  
MIKE A. LITTLE, BPR #18401  
Attorney for Defendant, Rondrell Sanford  
701 Cherry Street, Suite 200  
Chattanooga, Tennessee 37402  
(423) 267-5972

### CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2005, a copy of the foregoing Memorandum of Law in Support of Motion to Suppress was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

s/ Mike A. Little  
MIKE A. LITTLE, BPR #18401  
Attorney for Defendant, Rondrell Sanford  
701 Cherry Street, Suite 200  
Chattanooga, Tennessee 37402  
(423) 267-5972



**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

UNITED STATES OF AMERICA

Plaintiff-Appellee

Case No. 05-6489

v.

RONDRELL SANFORD

Defendant-Appellant

**DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL  
INTEREST**

Pursuant to 6<sup>th</sup> Cir. R. 25, Rondrell Sanford, makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly-owned corporation? **No.**

If the answer is YES, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

2. Is there a publicly-owned corporation, not a party to the appeal, that has a financial interest in the outcome? **No.**

If the answer is YES, list the identity of such corporation and the nature of the financial interest:

\_\_\_\_\_  
MIKE A. LITTLE

\_\_\_\_\_  
DATE

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**STATEMENT IN SUPPORT OF ORAL ARGUMENT**

Defendant-Appellant requests that oral argument be heard in this case because the issues require further explanation beyond that provided by the written brief and because oral argument will facilitate the decision-making process.

## STATEMENT OF SUBJECT MATTER AND APPELLATE

### JURISDICTION

Defendant-Appellant states that:

1. Subject matter jurisdiction in this case was vested in the United States District Court for the Eastern District of Tennessee upon the filing of an indictment on March 22, 2005 ( R. 17, Indictment, APX \_\_\_ ) naming the United States of America as plaintiff and Rondrell Sanford as defendant by virtue of Title 18, *United States Code*, § 3231, which grants original jurisdiction to the district court over all offenses against the laws of the United States;

2. Appellate jurisdiction in this case was vested in this Court upon the filing of a notice of appeal by defendant-appellant on September 20, 2005 ( R. 62, Notice of Appeal, APX \_\_\_ ), from the judgment and commitment entered on September 12, 2005 ( R. 63, Judgment, APX \_\_\_ ) by virtue of Title 28, *United States Code*, § 1291, which grants the Circuit Court of Appeals jurisdiction to review all final decisions of the district court.

This appeal is from a judgment disposing of all claims with respect to the parties.

**STATEMENT OF THE ISSUE**

- I. APPELLANT SANFORD'S TRAFFIC STOP WAS NOT SUPPORTED BY PROBABLE CAUSE, NOR WAS IT SUPPORTED BY REASONABLE SUSPICION; ACCORDINGLY, HIS STOP, DETENTION, AND SEIZURE WERE UNCONSTITUTIONAL.



## STANDARD OF REVIEW

When reviewing the district court's denial of a motion to suppress evidence, the Court applies a clearly erroneous standard to the district court's findings of fact while reviewing its conclusions of law de novo. *See United States v. Lumpkin*, 159 F.3d 983, 986 (6th Cir. 1998). In doing so, the Court views evidence in the light most favorable to the United States. *See United States v. Wellman*, 185 F.3d 651, 655 (6th Cir. 1999).

## STATEMENT OF THE CASE

### Nature of the Case, Course of Proceedings and Disposition in the Court Below

This is a direct appeal by Defendant-Appellant, Rondrell Sanford, (hereinafter “Sanford” or “Defendant”) from a criminal judgment and commitment entered in the United States District Court for the Eastern District of Tennessee, at Chattanooga.

On March 22, 2005, a federal grand jury returned an indictment charging Defendant, along with one co-defendant, Tyshawn Hill, with various violations of federal drug laws.

Count 1 charged that Defendant did combine, conspire, confederate and agree to knowingly, intentionally and without authority violate Title 21, *United States Code*, § 841(a)(1) and 841(b)(1)(A), that is, distribute five kilograms or more of mixture and substance containing cocaine hydrochloride, a schedule II controlled substance in violation of Title 21, *United States Code*, § 846. Count 2 charged that Defendant knowingly, intentionally, and without authority possess with the intent to distribute five kilograms or more of a mixture and substance containing cocaine hydrochloride, a schedule II controlled substance, in violation of Title 21, *United States Code*, § 841(a)(1) and (b)(1)(A) and Title 18, *United States Code*, § 2 ( R. 12, *Indictment*, APX p. \_\_\_\_.) On March 24, 2005 Defendant appeared before the District Court for arraignment and initial appearance and entered pleas of not guilty

to each relevant count of the indictment ( R.19, minute entry, APX p. \_\_\_\_\_).

On May 3, 2005, Defendant filed a motion to suppress ( R. 32, APX p. \_\_\_\_\_). The motion to suppress was heard on May 26, 2005 ( R. 35, minute entry, APX p. \_\_\_\_\_). On May 31, 2005, The Court denied Defendant's motion to suppress ( R. 38, APX p. \_\_\_\_\_).

On May 31, 2005, Defendant appeared in Court for jury trial ( R. 44, minute entry, APX p. \_\_\_\_\_). On June 1, 2005, the Defendant was found guilty of counts one and two ( R. 50, APX p. \_\_\_\_\_).

On June 10, 2005, Defendant filed motion for acquittal ( R. 52, APX p. \_\_\_\_\_). On July 25, 2005, Court denied Defendant's motion for acquittal ( R. 55, APX p. \_\_\_\_\_).

On September 20, 2005, Court sentenced Defendant to 121 months imprisonment, 5 years supervised release, and \$200.00 special assessment ( R. 60, minute entry, APX p. \_\_\_\_\_).

On September 20, 2005, Defendant filed his Notice of Appeal from the final judgment ( R. 62, APX p. \_\_\_\_\_). Defendant's judgment was filed on September 12, 2005 ( R. 63, APX p. \_\_\_\_\_).

## STATEMENT OF FACTS

A suppression hearing was held on May 26, 2005 (See R. 35, Minute Entry APX p. \_\_\_\_\_). A jury trial was held on May 31, 2005 and June 1, 2005 (See R. 44, 45, Minute Entry APX p. \_\_\_\_\_). Defendant submits that the relevant facts to his appeal are the following excerpts from the transcripts of the suppression hearing and the jury trial.

On February 25, 2005, Officer Kenneth Pruitt, McMinn County Sheriff's Department, conducted a vehicle stop of a Buick Regal traveling north bound on Interstate 75 ( R. 70, pp. 4-5). Pruitt testified that the Buick Regal was following extremely close to a tractor trailer approximately 10 feet, which was the reason for the traffic stop ( R. 70, pp. 5-6). Pruitt was driving north bound on Interstate 75 in the right lane when he approached the Buick Regal also driving in the right lane. Pruitt followed the Buick Regal for two or three miles at a speed of 65 miles per hour. The speed limit was 70 miles per hour ( R. 70, pp. 36-37).

As Pruitt was following the Buick Regal, the Buick Regal approached an 18 wheel truck also driving in the right lane. The truck was traveling at a considerably slower speed, resulting in the Buick Regal catching up with the truck. The driver of the Buick Regal slammed on his brakes and backed off from the truck. The driver was unable to pass in the left lane because of faster moving traffic preventing a lane

change.

Pruitt testified this was the reason why he stopped the Buick Regal for following too close ( R. 70, pp. 38-40). At trial, Pruitt testified he initiated his lights right when the driver of the Buick Regal hit the brakes. Pruitt testified that it is quite often that vehicles move up on slower trucks causing the faster vehicles to brake and back off. Pruitt testified that he stopped everyone for that reason ( R. 69, pp. 54-55).

The Buick Regal pulled over immediately. The co-defendant, Tyshawn Hill was driving. Hill provided Pruitt his driver's license, the registration and proof of insurance. The license was a learner's permit, but Pruitt did not realize this fact at the time ( R. 69, pp. 13-14).

Pruitt noticed eleven air fresheners on the turn signal ( R. 69, pp. 14). Pruitt testified there was around 15 air fresheners at the suppression hearing. They are commonly associated with people trying to cover up the odor of narcotics. Pruitt first noticed the air fresheners when he approached the Buick Regal ( R. 70, p. 8).

The passenger said he did not have any ID ( R. 70, p. 9). At Pruitt's request, Hill exited the vehicle. They had a discussion about following too close. Pruitt inquired of Hill about the passenger's name, to which Hill replied his nickname is "T". Hill said they were returning form Atlanta where they saw an Atlanta Hawks game ( R. 70, pp. 11-13).

Pruitt then separately questioned Sanford who was the passenger. Sanford only knew Hill by the nickname of "T-Money". Sanford said he did not have a nickname himself. Sanford told Pruitt they were traveling from Atlanta. Sanford told Pruitt that he had not seen a basketball game in a couple of years. Sanford gave his real name to Pruitt when asked. The answers by both defendants raised Pruitt's suspicions ( R. 70, pp. 15-19). Pruitt explained to both defendants that after checking their names he would let them go ( R. 70, p. 19).

Pruitt requested Deputy Johnson to back him up during the traffic stop. Johnson arrived within four minutes ( R. 70, p. 22). Pruitt asked Hill if he was hauling anything illegal in the vehicle. Hill responded, no. Hill was calm and cordial. Pruitt then asked for permission to search Hill's vehicle. Hill gave consent ( R. 70, pp. 24-25). Pruitt did a pat down of Hill and found two or three phones, a pager and a roll of twenty dollar bills folded with two black rubber bands around the money ( R. 70, pp. 27-28).

Pruitt did a pat down on Defendant and found a little bag of Marijuana ( R. 70, p. 29). Pruitt positioned both defendants standing between the Buick Regal and Pruitt's vehicle leaning against Pruitt's front bumper. Pruitt returns to the front seat of his vehicle when Johnson opens the rear door of the Buick Regal and reaches in. Hill turns toward Sanford and talks to Sanford. Hill then turns toward and looks at

the north bound traffic and runs across the interstate ( R. 70, pp. 31-34). Pruitt's vehicle was approximately 10 feet behind the Buick Regal ( R. 69, p. 49). Sanford remains standing in place by himself ( R. 70, p. 50). A suitcase with eight kilograms of cocaine was found on the backseat of the Buick Regal ( R. 69, p. 35). Hill was eventually captured about a mile and a half distance away from the traffic stop location ( R. 69, p. 43). Dale Murray, an employee of the McMinn County Correctional Facility identified a cell phone collected from Sanford on February 25, 2005. Murray testified seven hundred Dollars was removed from Sanford's pocket ( R. 69, pp. 4-7).

Angel Ramirez, a forensic chemist, testified that the substance tested positive for cocaine hydrochloride and that the weight was 7,948 grams or 7.9 kilograms ( R. 69, pp. 88-92).

## SUMMARY OF THE ARGUMENT

Sanford submits that the District Court erred in overruling his motion to suppress. Specifically, in that motion, Sanford alleged that officer Pruitt made an illegal stop of the vehicle on I-75 north bound near Chattanooga, Tennessee. Prior to trial, a suppression hearing was held to address this issue. To sustain its burden, the government called police officer Kenneth Pruitt (“officer Pruitt”) of the McMinn County Sheriff’s Department.

According to officer Pruitt, on February 25, 2005, at approximately 4:30 pm, Hill and Sanford were proceeding north bound on I-75, near Chattanooga, Tennessee in a 2001 Buick Regal. In the general proximity of the mile marker 58, officer Pruitt pulled behind the Appellants, who were traveling in the right lane at 65 miles per hour. The speed limit was 70 miles per hour. He followed them for two or three miles. The traffic was moderate. Rather suddenly, the Buick Regal came upon an 18 wheeler “going considerably slower” than the body of the traffic. Before getting too close to the truck, Hill attempted to change lanes. However, he was unable to safely change lanes because of a rapidly advancing van in the left lane. As a result, Hill braked his vehicle. As a result, he was momentarily in close proximity to the tractor trailer. Officer Pruitt promptly blue-lighted Hill and Hill immediately responded, pulling over and providing officer Pruitt with his driver’s license, registration, and



insurance information. Appellant Hill was cited for following too close.

After hearing this evidence, the district court denied Sanford's motion to suppress, both from the bench and by a written order. Specifically, the district court found that the traffic stop was lawful and that the ensuing actions - those after the stop - by officer Pruitt were also lawful.

In this appeal, Sanford maintains that the co-defendant did not commit the purported traffic infraction of following too close. This conclusion is born-out by the record on appeal and presents, for the most part, a discrete question of law. However, it should also be considered that the officers involved in this interdiction effort had substantial credibility concerns in the form of prior forced dismissals from law enforcement agencies for making illegal stops and for failing to follow orders.

For these reasons, Sanford submits that the initial traffic stop was illegal and, consequently, that his ensuing detention, search, and arrest were tainted with this primary illegality. Accordingly, the fruits of all these illegalities constituted 'fruit of poisonous tree' and should have been suppressed.

## ARGUMENT

**APPELLANT SANFORD’S TRAFFIC STOP WAS NOT SUPPORTED BY PROBABLE CAUSE, NOR WAS IT SUPPORT BY REASONABLE SUSPICION; ACCORDINGLY, HIS STOP, DETENTION, AND SEIZURE WERE UNCONSTITUTIONAL.<sup>1</sup>**

Under the Fourth Amendment, law enforcement may briefly stop an individual if they have “reasonable suspicion” that he has committed a crime. In *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), the Supreme Court first stated that “the police should be allowed to ‘stop’ a person and detain him briefly for questioning upon suspicion that he may be connected with criminal activity.” *Id.* at 10, 88 S. Ct. 1868. “[I]n justifying the intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Id.* at 21, 88 S. Ct. 1868. The reasonable suspicion standard requires that “an officer making a *Terry* stop must have

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<sup>1</sup> In the undersigned’s opinion, there is some conflict in the Sixth Circuit as to whether a traffic stop must be supported by probable cause or by reasonable suspicion. See *Gaddis v. Redford Township*, 364 F.3d 763, 770 (6<sup>th</sup> Cir. 2004) (clarifying this apparent conflict as invited by *United States v. Freeman*, 209 F.3d 464 (6<sup>th</sup> Cir. 2000); but see, *United States v. Davis*, 430 F.3d 345, 352 (6<sup>th</sup> Cir. 2005) (“So long as the officer has probable cause to believe that a traffic violation has occurred or was occurring, the resultant stop is not unlawful and does not violate the Fourth Amendment.” (Citations omitted)). Appellant Sanford maintains that probable cause is required; but viewed either way, the traffic stop is not justifiable.

more than a hunch” that criminal activity is occurring, but “considerably less than proof of wrongdoing by a preponderance of the evidence. *United States v. Hurst*, 228 F.3d 751, 757 (6<sup>th</sup> Cir. 2000) (citing *United States v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581 (1989)); *Houston v. Clark County Sheriff*, 174 F.3d 809, 813 (6<sup>th</sup> Cir. 1999); *United States v. Freeman*, 209 F.3d 464 (6<sup>th</sup> Cir. 2000) (police did not have probable cause to believe the motorist was driving while intoxicated or that he committed other traffic infraction);

“So long as the officer has probable cause to believe that a traffic violation has occurred or was occurring, the resultant stop is not unlawful and does not violate the Fourth Amendment.” *United States v. Bradshaw*, 102 F.3d 204, 210 (6<sup>th</sup> Cir.1996) (internal quotation marks and citation omitted), *cert. denied*, 520 U.S. 1178, 117 S. Ct. 1453 (1997). To support the probable cause determination, the facts and circumstances within the officer’s knowledge must be “sufficient in themselves ‘to warrant a man of reasonable caution in the belief that’ an offense has been or is being committed.” *Brinegar v. United States*, 338 U.S. 160, 175-76, 69 S. Ct. 1302 (1949) (quoting *Carroll v. United States*, 267 U.S. 132, 162, 45 S. Ct. 280 (1925)). As long as the officer has a *single* legitimate basis for the stop, the traffic stop is permissible, “regardless of whether this was the *only basis* or merely one basis for the stop.” *Bradshaw*, 102 F.3d at 210 (internal quotation marks and citation omitted); *see also*,

*Whren v. United States*, 517 U.S. 806, 812-13, 116 S. Ct. 1769 (1996).

The SOLE issue here is whether the interdiction officer, officer Pruitt, made a lawful (constitutional) traffic stop of Appellant Sanford for offense of *following too close* as provided by T. C. A. § 55-8-124(a). There are no other grounds upon which this stop might be legitimated; it rises and falls on this determination. In pertinent part, T. C. A. § 55-8-124(a) provides as follows:

The driver of a motor vehicle shall not follow another vehicle more closely than is **reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.**

(Bolding added). If, as Appellant Sanford submits, officer Pruitt was not justified in concluding that the vehicle was “following too closely” to the tractor trailer, the resulting stop and detention was illegal; and the fruits of that illegality should have been suppressed by the district court.

In its Order on this issue, the district court takes the view that merely being in close proximity to another vehicle, moving in the same lane of traffic, constitutes the offense of *following too closely*, thereby immunizing officer Pruitt’s judgment from further judicial scrutiny. ( R. 38; R. 70 at 85.) That is not, however, the state of the law as recognized by this Court in *United States v. Valdez*, 147 Fed. Appx. 591 (6<sup>th</sup> Cir. 2005) (unpublished opinion). There, Sanford and co-defendant Hill were

stopped for *following too close*. In the course of the stop, the investigating officer discovered the contraband for which the defendant was standing trial. On appeal, the defendant challenged the constitutionality of the stop.

Analyzing the propriety of the traffic stop, the *Valdez* Court noted that the defendant followed another vehicle for fifteen (15) seconds at a distance of twenty feet. *Id.* at 595. Distinguishing these facts from the facts in *United States v. Freeman*, 209 F.3d 464 (6<sup>th</sup> Cir. 2000), the *Valdez* Court was primarily concerned with the *brevity* of the alleged infraction in *Freeman, supra*, which it referred to as “an instant in time.” *Id.* at 595. The sustained nature of the defendant’s errant driving, the *Valdez* Court reasoned, “was not the sort of brief, isolated deviation that troubled the *Freeman* court.” *Id.* at 595. Accordingly, the *Valdez* Court held that the officer was justified in making the initial traffic stop.

Here, the operative facts are almost identical to the troubling scenario in *Freeman, supra*, in the sense that co-defendant Hill didn’t commit a traffic offense; he encountered a fairly routine highway situation; and in dealing with this situation, he acted in an entirely reasonable manner – in the same manner as anyone on this Court might act under those circumstances. The uncontested facts unequivocally demonstrate this:

- Hill was traveling 65 miles per hour in a 70 mile per hour zone on I-75

northbound near Chattanooga, Tennessee.

- It was Friday afternoon, and the traffic is was moderate to heavy. ( R. 70 at 52).
- It was growing dark but was still light. ( R. 70 at 51).
- Officer Pruitt followed the vehicle occupied by the defendant for three miles and didn't observe any other traffic violations. ( R. 70 at 37).
- At no point did officer Pruitt pull alongside the defendant's vehicle. ®. 70 at 38; *C.f. United States v. Valdez*, 147 Fed. Appx. 591 (6<sup>th</sup> Cir. 2005).
- After being followed for three miles by officer Pruitt, the vehicle came upon a tractor trailer (in his lane) going "considerably slower" than the body of traffic. ( R. 70 at 38).
- In effort to pass the tractor trailer, Hill started to enter the left lane; however, a speeding van made passing unsafe; and prudence forced Hill to remain in the right lane. ( R. 70 at 38-40).
- Because of the van, Hill was unable to make the lane-change and was compelled to brake. In the process, the vehicle MOMENTARILY came within ten (10) feet of the tractor trailer. ( R. 70 at 38-40).

- Hill immediately backed off the tractor trailer. ( R. 70 at 40).

On the above-facts, officer Pruitt concluded that Hill violated the law, driving in an imprudent and unreasonable manner given the speed of the other vehicles on the highway, the degree of traffic on the highway, and the condition of the highway.

While officer Pruitt's subjective motivations are not relevant for the purposes accessing of the constitutionality of the traffic stop, his *credibility* is relevant and is sadly wanting. Consider the facts:

- At the time he made this stop, officer Pruitt's car was equipped with video camera, but it was not working during this stop. ( R. 70 at 12).
- As he followed the vehicle for three miles, officer Pruitt did not call-in the vehicle's license number
- When he initiated this stop, officer Pruitt did not call-in to dispatch to report this stop, to notify dispatch of his position, or to request backup. Instead, officer Pruitt used his personal cell phone to call another officer to meet him on the scene. This particular officer was close personal friend (Deputy Johnson), who at the time of this trial had just resigned from his position under the threat of being fired for routinely making illegal traffic stops. ( R. 70 at 22, 47, 48, 51, 52, 93; R. 70 at 70: Defense Exhibits One, Two, Three, and Four).

- Officer Pruitt was apparently cut from the same cloth as deputy Johnson. While serving as a police officer for the City of Pikeville, officer Pruitt was suspended with pay while a grand jury investigated allegations that he stole hydrocodone from the city jail. Ultimately, the grand jury returned a no bill, and the situation dissipated. However, his employment troubles there persisted. A short time later, officer Pruitt was forced from to resign as a police officer from the City of Pikeville for failing to follow orders. ( R. 70 at 65-67; R. 70: Defense Exhibits One, Two, Three, and Four).
- Co-Defendant Hill gave officer Pruitt with his New York State Learner's Permit, which he mistook for a valid driver's license. ( R. 70 at 7, 58).
- During Co-Defendant Hill's detention, officer Pruitt observed a substantial amount of money on Hill's person; however, this money mysteriously disappeared and was never recovered despite the fact that deputy Johnson and officer Pruitt each had a tracking dog with them during their pursuit of Hill. ( R. 70 at 28).
- Hill, carrying nearly eight kilograms of cocaine, "consented" to a search of his vehicle. ( R. 70 at 25, 26).
- The actual citation (for following too close) issued to Hill by officer Pruitt **WAS MISSING** at the time of the suppression hearing. ( R. 70 at 82). As



luck would have it, this citation turned up at trial. ( R. 69 at 69: Defense Number Five (5)). Incredibly, Hill's name was FORGED on the traffic citation, i.e. someone other than Hill signed this citation. ( R. 69 at 69 to 73: *Compare* Defense Number Five to Government Exhibit Number 13).

In isolation, any one of these *potential* credibility matters is explicable. But in aggregation, they are not so easily dismissed and certainly call into question officer Pruitt's judgment in making this stop.

The manifest credibility concerns of officer Pruitt coupled with the facts of this stop compel one conclusion. Officer Pruitt saw a 2001 Buck Regal with New York tags driven by two black males. To his mind, this *profile* suggested possible drug trafficking. So, he called his buddy; flipped the blue lights, and pulled them over. This is wrong under our Constitution; and it represents a vile use of the decision in *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769 (1996): “[An] officer must still have probable cause to make the initial stop, and must not abuse the *Whren* principle by using it as a subterfuge to justify the recovery contraband after an illegal stop and search.” *United States v. Freeman*, 209 F.3d 464, 467 (6<sup>th</sup> Cir. 2000) (Concurring opinion by Circuit Judge Clay).

For these reasons, the district court erred in upholding the legality of this traffic stop; and Sanford implores this Court to “scrutinize the attendant facts [surrounding

this search] with an eye to detect and a hand to prevent violations of the Constitution by circuitous and indirect methods.” *Byars v. United States*, 273 U.S. 28, 33 (1927).

## CONCLUSION

For the foregoing reasons, Appellant Sanford, respectfully requests this Court to find that the District Court erred in denying the motion to suppress. Consequently Appellant Sanford requests the convictions be overturned and dismissed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the foregoing Brief have been mailed in the United States Mail with sufficient postage to the following addresses:

Perry Piper  
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Rondrell Sanford, Inmate #

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This \_\_\_\_ day of \_\_\_\_\_, 2006.

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Mike A. Little