

**IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

PAMELA MOSES,)	
)	
Plaintiff,)	
)	
v.)	Case No. CT-1579-19
)	Division I
MARK GOINS, TRE HARGETT, and)	
JONATHAN SKRMETTI, in their official)	
capacities,)	
)	
Defendants.)	

SECOND AMENDED COMPLAINT

Plaintiff Pamela Moses brings this action against Defendants Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, Tre Hargett, in his official capacity as the Secretary of State for the State of Tennessee, and Jonathan Skrmetti, in his official capacity as Attorney General and Reporter for the State of Tennessee, respectfully alleging the following grounds in support of the relief sought.

INTRODUCTION

1. The right to vote “is regarded as a fundamental political right, because preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

2. “The right to vote, so precious to Tennesseans during the Reconstruction Era, qualifies today as a fundamental liberty in a representative government and, when illegally abridged, should be restored” *May v. Carlton*, 245 S.W.3d 340, 347 (Tenn. 2008).

3. The history of felon disenfranchisement in Tennessee is rooted in a tradition of discrimination and racism. Tennessee’s constitutional provisions authorizing such disenfranchisement were adopted during the apex of slavery in Tennessee, and were used for

decades after the Civil War to discriminate and wrongfully prevent Black Tennesseans from voting. They still do so today.

4. It is time to vindicate the promise of Tennessee’s Declaration of Rights that “all power is inherent in the people, and all free governments are founded on their authority,” and that our “elections shall be free and equal.” Tenn. Const. Art. I §§ 1, 5.

5. The Tennessee Constitution guarantees free and fair elections, in which all citizens have an equal voice in choosing their elected representatives. The right to vote is a fundamental right in this state, and, like all fundamental rights, it may not be abridged absent a compelling government interest. Yet with no legitimate government interest, state law permanently denies the right to vote to Plaintiff and thousands of people living in Tennessee communities because of a prior felony conviction. What is more, in the vast majority—if not all—cases where voting rights are stripped from Tennesseans as a result of plea bargains, these voters are—like Plaintiff—*not even informed of the consequences of pleading guilty*, because Tennessee has failed to require disclosure of this fact. Many Tennesseans—like Plaintiff—would never have pleaded guilty if they had known their voting rights would be permanently revoked.

6. These Tennesseans are family members, friends, neighbors, co-workers, and taxpayers. Just like their fellow Tennesseans, their lives are governed by the laws voted on and enforced by our elected officials. But *unlike* their neighbors, these Tennesseans are denied the fundamental right to participate in choosing their representatives. Tennessee’s permanent disenfranchisement of citizens living in our community based solely on a prior felony conviction serves no legitimate government purpose. It is unfair, discriminatory, fundamentally wrong, and violates the Tennessee Constitution.

7. The impact of Tennessee’s disenfranchisement scheme is staggering. The State of Tennessee denies the right to vote to approximately 451,000 of its citizens because of felony convictions, accounting for more than 9.0% of the total voting age population of Tennessee. *See* The Sentencing Project, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction* at Table 3 (Oct. 2020), <https://www.sentencingproject.org/wp-content/uploads/2020/10/Locked-Out-2020.pdf>. Tennessee has the second highest rate of disenfranchisement in the United States, behind only Mississippi.¹ *Id.*

8. Approximately 174,997 of disenfranchised Tennesseans are Black, accounting for more than 21% of the Black voting age population, the second highest rate of Black disenfranchisement in the United States.² *Id.* at Table 4. The next closest state, Mississippi, only disenfranchises 15.96% of its Black voting age population. *Id.*

9. In contrast to the hundreds of thousands of Tennesseans who have been disenfranchised, only approximately 3,415 have had their rights restored since 2016. *Id.* at Table 2 (citing information provided by the Tennessee Secretary of State).

10. While the Tennessee Constitution provides that laws “may be passed excluding from the right of suffrage persons who may be convicted of infamous crimes,” the legislature must exercise this authority consistent with other constitutional limitations.

11. One such limitation is the Tennessee Constitution’s command that “all elections shall be free and equal,” a provision specifically intended to prohibit government manipulation

¹ Tennessee disenfranchises almost twice the number of persons (451,000) as compared to Mississippi (235,152), but Mississippi does disenfranchise at a slightly higher rate on a percentage basis (10.55%) as compared to Tennessee (9.09%). Tellingly, Tennessee has disenfranchised almost twice the number of persons as California (243,181) despite the fact that California has over five times the voting age population of Tennessee. *See* The Sentencing Project, *Locked Out, supra*, at Table 3.

² Wyoming has a higher Black disenfranchisement rate as a percentage basis, but this is skewed by both the small number of total Black persons disenfranchised (1,341) and the small number of total Black voting age persons in Wyoming (3,702).

of the electorate. Permanent felony disenfranchisement perniciously restricts the eligible electorate in Tennessee. Tennessee’s felony-based disenfranchisement laws strike at the heart of the Free and Equal Elections Clause’s guarantee that elections in Tennessee must comport with the will of the people.

12. Tennessee’s Constitution also forbids unequal application—either in intent or effect—of its laws. Tenn. Const. Art. I § 8 and Art. XI § 8. Tennessee’s felon disenfranchisement provisions were adopted by an explicitly racist set of elected officials, wielded as a method of race-based oppression and discrimination, and continue to have a disparate racial impact in Tennessee to this day. As a result, these laws violate the Tennessee Constitution’s guarantee of equal protection.

13. Tennessee’s Constitution also guarantees that “excessive bail shall not be required, no excessive fines imposed, nor cruel and unusual punishments inflicted.” Tenn. Art. I § 16. Tennessee’s laws that permanently disenfranchise thousands of Tennesseans constitute cruel and unusual punishment in violation of Tennessee’s constitution in that they are penal in nature yet do not comport with contemporary standards of decency, are grossly disproportionate to the offenses involved, and go beyond what is necessary to accomplish any legitimate penological objective.

14. Finally, Tennessee’s Constitution guarantees due process of law, both procedurally and substantively. Tenn. Const. Art. I § 8. “Early in Tennessee’s judicial history, this Court determined that persons invested with the right to vote can be deprived only ‘by due process of law.’” *May v. Carlton*, 245 S.W.3d 340, 346 (Tenn. 2008). By permanently stripping Tennesseans of the right to vote without notice, Tennessee’s statutes violate Tennessean’s due process rights and the Tennessee Constitution.

15. This Court should declare that Tennessee's permanent felony disenfranchisement laws violate the Tennessee Constitution and enjoin Defendants from denying the fundamental right to vote to people previously convicted of a felony who are living in society.

PARTIES

16. Plaintiff Pamela Moses is a United States citizen and resident of Shelby County, Tennessee. She seeks to exercise her right to vote in Tennessee pursuant to Tennessee Constitution Art. I, § 5, but has been denied registration by Defendants.

17. Defendant Tre Hargett is sued in his official capacity as the Secretary of State for the State of Tennessee. As Tennessee Secretary of State, Secretary Hargett has responsibility for overseeing the administration of elections in Tennessee, and has supervisory authority over the Coordinator of Elections. This authority extends to enforcement of the eligibility restrictions to vote in Tennessee.

18. Defendant Mark Goins is sued in his official capacity as the Coordinator of Elections for the State of Tennessee. Coordinator Goins has authority over the administration of elections across Tennessee, including the authority to promulgate, rescind, and suspend regulations governing Tennessee election procedures and to instruct county election commissions regarding election administration.

19. Defendant Jonathan Skrmetti is sued in his official capacity as the Attorney General and Reporter for the State of Tennessee. Attorney General Skrmetti has authority to issue opinions interpreting, but not changing the meaning of, Tennessee law.

JURISDICTION AND VENUE

20. This Court has jurisdiction to hear and adjudicate the claims in this suit, which challenge an official interpretation of Tennessee statutes, pursuant to, *inter alia*, Tenn. Code Ann. §§ 16-11-102 and 29-14-102.

21. Venue for this suit is properly laid in the Thirtieth Judicial District pursuant to Tenn. Code Ann. § 20-18-102, because this is an action brought pursuant to Tenn. Code Ann. § 20-18-101(a), and Petitioner resides in Shelby County, Tennessee.

GENERAL ALLEGATIONS

I. Felony Disenfranchisement Was Intentionally Weaponized as a Means to Suppress the Political Power of Black Tennesseans

22. Tennessee has a vibrant history of independence and democracy that has, unfortunately, been polluted by pernicious discrimination against Black Tennesseans. This discrimination has transformed over time from an explicit embrace of racism and white supremacy to a more malignant strain of statutory and structural discrimination, but it has always been there.

A. Tennessee's Constitution of 1796

23. Perhaps most remarkable is that, at least as a constitutional matter, racial restrictions on voting were *not* present in the original Tennessee constitution. This was reflected in other state constitutions of the time, though law and practice acted to disenfranchise Black persons despite the lack of an explicit constitutional command to do so.

24. The development of the Tennessee Constitution began with the adoption of the North Carolina Constitution in 1776, of which Tennessee was then still a part.

25. Article I, Section 10 of the North Carolina Constitution provides that “All elections shall be free.” North Carolina’s Free Elections Clause traced its roots to the 1689

English Bill of Rights, which declared that “Elections of members of Parliament ought to be free.” Bill of Rights 1689, 1 W. & M. c.2 (Eng.); *see also* John V. Orth, *North Carolina Constitutional History*, 70 N.C. L. REV. 1759, 1797-98 (1992).

26. This provision in the English Bill of Rights was a response to efforts by the king to manipulate parliamentary elections by manipulating the composition of the electorate. J.R. JONES, *THE REVOLUTION OF 1688 IN ENGLAND* at 148 (1972). The king could modify voter eligibility rules by issuing municipal charters, and in some areas he would issue new charters to shrink the electorate to help his allies, while in others, he expanded the electorate to ensure his opponents would lose. *See* GEORGE H. JONES, *CONVERGENT FORCES: IMMEDIATE CAUSES OF THE REVOLUTION OF 1688 IN ENGLAND* at 75-78 (1990). The king thus manipulated the electorate in different areas “based on the detailed suggestions of the [king’s] agents as to what specific local rights could, with electoral advantage, be confirmed or extended.” JONES, *THE REVOLUTION OF 1688 IN ENGLAND*, at 148. The king’s efforts to manipulate elections led to a revolution. After dethroning the king, the revolutionaries called for a “free and lawful parliament” as a critical reform, and they enacted the free elections clause. GREY S. DE KREY, *RESTORATION AND REVOLUTION IN BRITAIN: A POLITICAL HISTORY OF THE ERA OF CHARLES II AND THE GLORIOUS REVOLUTION* at 241, 247-48, 250 (2007).

27. North Carolina’s original free elections clause, adopted in 1776, provided that “elections of members, to serve as Representatives in the General Assembly, ought to be free.” N.C. Declaration of Rights, § VI (1776). Its 1776 Constitution contained no restrictions on voting due to race, and no restrictions due to conviction of crime.

28. Approximately 20 years later, Tennessee held its Constitutional convention, adopting its own constitution and becoming a state. Tennessee’s 1796 Constitution enshrined the

right to vote for all male persons, without regard to race or ethnicity. As compared to the North Carolina Constitution of 1776, the “suffrage provisions were greatly simplified and democratized. Adult free men - nothing was said about color - who were inhabitants of the state could vote in a county where they resided and were possessed of a freehold; if inhabitants of the county for six months they could vote without further qualification.” Wallace McClure, *The Development of the Tennessee Constitution*, 292 TENN. HISTORICAL MAGAZINE 303 (1915) available at <https://www.jstor.org/stable/pdf/42637325.pdf>.

B. Slaveholders’ Rise to Power and Tennessee’s Racist Constitution of 1834

29. It was not until 1834, along with the sharp increase of slavery in Tennessee and the concurrent rise in political power of slaveholders, when Tennessee’s Constitution was amended to specify that only white males would be permitted to vote.

30. According to the United States census, Tennessee contained 3,417 slaves in 1790; that number increased over *forty times* to 141,603 by 1830, just before the Tennessee Constitution was amended to make clear that Black persons could not vote. See UNITED STATES CENSUS BUREAU, *Statistics of the United States*, Chapter V (“Slave Population of the United States”) (1850).³

31. In the words of one author: “Increased democracy -- but democracy limited to the white race -- was the keynote of the [1834] convention’s work. Property qualifications both for voting and holding office were swept utterly away, so far as officials named in the constitution were concerned.” McClure, *The Development of the Tennessee Constitution* at 308 (emphasis added).

³ Available at: <https://www2.census.gov/library/publications/decennial/1850/1850c/1850c-04.pdf>

32. “Article IV, Section 1 delineates voting rights basically as they had existed in the 1796 Constitution, with the notable exception that the word “white” was added to free men, thus taking away from free blacks their formerly held right to vote. Equally disappointing, Article II, Section 31 prohibited the legislature from passing any laws emancipating slaves.” Andrew Gold, *The Antebellum Constitutions of Two S. States Compared & Contrasted: S.C. & Tennessee*, 23 J.S. Legal Hist. 1, 18 (2015) (emphasis added).

33. Two clauses were added to the Tennessee Constitution, both of which represented a substantial departure from the Constitution of 1796. Whereas the Constitution of 1796 contained neither a racial prohibition on voting nor provision for disenfranchisement because of conviction of a crime, the new 1834 Constitution contained both.

34. A new Article IV § 1 was added, specifying that “Every free white man of the age of twenty-one years, being a citizen of the United States, and a citizen of the county wherein he may offer his vote, six months next preceding the day of election, shall be entitled to vote for Members of the general Assembly, and other civil officers, for the county or district in which he resides” Tenn. Const. of 1834, Art. IV § 1 (emphasis added).

35. Second, Article IV, after limiting the franchise to free “white” men in § 1, also added a new § 2: “Laws may be passed excluding from the right of suffrage, persons who may be convicted of infamous crimes” (the “Infamous Crimes Clause”). Tenn. Const. of 1834, Art. IV § 2 (emphasis added).

36. The Infamous Crimes Clause has remained unchanged and undisturbed in the Tennessee Constitution since 1834.

37. While the 1834 Constitution did specify that only white men could vote, it also left open the door for some free men of color to vote by noting the following: “provided, that no

person shall be disqualified from voting in any election on account of color, who is now by the laws of this State, a competent witness in a court of Justice against a white man.” Tenn. Const. of 1834, Art. 4 § 1.

38. Thus, because *some* Black men could still vote under this provision, the Infamous Crimes Clause was adopted as a backstop permitting the disenfranchisement of these Black voters. Thus, disenfranchisement of Black Tennesseans by virtue of criminal conviction began in Tennessee as far back as 1834, though its use increased substantially after 1867, as explained below.

39. The disenfranchisement of infamous persons is rooted in English common law. Infamy “could result either from the commission of an infamous crime,” such as treason, “or from the receipt of an infamous punishment such as whipping,” which could be inflicted for certain other crimes. *See* PIPPA HOLLOWAY, *LIVING IN INFAMY: FELON DISENFRANCHISEMENT AND THE HISTORY OF AMERICAN CITIZENSHIP* at 6, 34, and 91 (2014).

C. Tennessee Revolts, Entrenching Racism and White Supremacy After the Civil War

40. At end of the Civil War, Tennessee—in context of readmission to the Union and in an attempt to avoid reconstruction—convulsed around the issue of giving Black men the right to vote. On June 5, 1865—a mere two months after the end of the Civil War—the Tennessee State Assembly passed and approved Chapter XVI, “An Act to limit the elective franchise,” which, although largely concerned with the voting rights of Confederate sympathizers, continued to explicitly limit voting rights to free **white** persons. Eugene G. Feistman, *Radical Disfranchisement and the Restoration of Tennessee, 1865-1866*, 135 *Tenn. Historical Quarterly* 151, 140 (1953).

41. This refusal to grant voting rights to freed slaves and other Black men was explicit and intentional. In considering further revisions to the right to vote in Tennessee, the *Knoxville Whig*, on September 27, 1865, announced common sentiment at the time:

I think it would be bad policy, as well as wrong in principle, to open the ballot box to the uninformed and exceedingly stupid slaves of the Southern cotton, rice, and sugar fields . . . When the people of Tennessee become satisfied that the Negro is worthy of suffrage, they will extend it, and not before.

Feistman, *Radical Disfranchisement*, at 139.

D. Tennessee Reluctantly Extends the Right to Vote to Black People, but There Are Strings Attached

42. In 1867, a law extending the right to vote to Black men was finally forced through the Tennessee legislature. As many have observed, however, “black suffrage in the ‘volunteer’ state stemmed primarily from political expediency—an attempt by the Negrophobic, ‘Radical’ minority to maintain power.” *RADICALISM, RACISM, AND PARTY REALIGNMENT: THE BORDER STATES DURING RECONSTRUCTION* at xvii (Richard O. Curry, ed., 1969) (citing THOMAS B. ALEXANDER, *POLITICAL RECONSTRUCTION IN TENNESSEE* (1950)).

43. As others have put it, “Negro suffrage was a weapon, not a cause.” *Id.* at Chapter 7, Jacqueline Balk and Ari Hoogenbloom, *The Origins of Border State Liberal Republicanism* at 234. “Though in power since 1865, Tennessee’s Governor William Brownlow and Radical cohorts had avoided the question of Negro suffrage. When it became apparent that in early January, 1867, that without Negro support Radical control would be upset, Brownlow urged the Tennessee legislature to enfranchise freedmen immediately. The legislature granted the Negro the vote, but denied him the basic rights to hold office or serve on a jury. Obviously, newly

enfranchised voters would support Radicalism, and it was equally clear that the Radicals widened the suffrage, not from ideological commitment but simply to stay in office.” *Id.*⁴

E. Ex-Confederates Regain Power and Find New Ways to Disenfranchise Black Tennesseans

44. Concurrent with Black men in Tennessee gaining the franchise, the existing government and society began to do everything possible to prevent them from voting. This included not only state-sponsored and extrajudicial executions, lynchings, and terrorism, but also deliberate and orchestrated exploitation of criminal statutes. In short order, the criminal code became one of the main weapons to disenfranchise Black people.

45. In 1866, Col. J. R. Lewis, Assistant Commission of the Freedman’s Bureau in Tennessee, reported that in “criminal cases, the freedmen are often convicted on the slightest testimony and for the want of proper deference, and whenever convicted may, in many districts, surely expect the heaviest penalty. . . . And in criminal cases the punishment often follows too closely on conviction to admit of appeal or remedy, though the punishment be ever so unjust.” DR. ALRUTHEUS AMBUSH TAYLOR,⁵ *THE NEGRO IN TENNESSEE, 1865-1880* at 41 (1941).

46. Governor Brownlow agreed, stating on November 22, 1866 in a message to the Tennessee General Assembly:

The condition and workings of our penitentiary system will command your attention. . . . I apprehend that these penalties have not been impartially administered. The violent prejudices and high passions engendered by the war, have not so far subsided as to secure from juries, in many cases, that most sacred right —an impartial verdict. . . . [People of color] are convicted with alacrity, and

⁴ See also Thomas B. Alexander, *Whiggery and Reconstruction in Tennessee*, 291 *J. of Southern Hist.* 305, 298-99 (1950) (“[B]efore the general state elections of August, 1867, Brownlow admitted that his program could not command a majority of the rump electorate and called for enfranchisement of the Negro as the only way to prevent defeat.”). Alexander also notes that after “a violent controversy the Brownlow Assembly did his bidding,” but that “Brownlow had to struggle against the antipathy of his fellow East Tennesseans for every step in granting civil or political rights to the Negro.” *Id.* at 299, 299 n. 24.

⁵ Dr. Taylor was a Professor of History and Dean of the College of Liberal Arts at Fisk University.

generally sentenced to the maximum punishment allowed by law. I feel that I am warranted in the estimate, that twenty-five per cent of the convicts now in the State prison, are there on account of the color of their skin, or their antecedents as soldiers or active Unionists, or at least who would not have been there if they had had different antecedents or a different color

TAYLOR, *supra*, at 41-42.

47. Just three short years after Black men in Tennessee were finally given the right to vote in 1867, the Conservative Democrats (many of whom were ex-Confederates) took back power in Tennessee, and the slim gains made for Black Tennesseans began to be rolled back.

48. As recognized by the Tennessee Virtual Archive (a project of the Tennessee State Library & Archives), these former Confederates and their allies “dominated the constitutional convention, and they were determined to prevent any future heavy-handed governorship such as Brownlow’s Radical regime. . . . There was a good deal of argument over black men voting. With the passage of the 15th Amendment to the US Constitution (even though Tennessee voted NOT to ratify), convention delegates knew they could not repeal suffrage for African Americans. A Radical US Congress was watching for just such a misstep by former Confederate states. Instead, the convention authorized a poll tax in the Constitution as a tool for controlling who voted.” *1870 Tennessee Constitution, Historical Note*, TENNESSEE VIRTUAL ARCHIVE, available at: <https://teva.contentdm.oclc.org/digital/collection/tfd/id/584/> (emphasis added).

49. Just as critically, in addition to the poll tax, these former Confederates and their allies reinforced the felon disenfranchisement provisions (and clearly signaled both their importance and malicious intent) by mutilating Article I § 5 of the 1796 and 1834 constitutions, which formerly read: “That elections shall be free and equal.” It now read: “That elections shall be free and equal, and the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon a conviction by a jury of some infamous crime, previously

ascertained and declared by law, and judgment thereon by court of competent jurisdiction” (the “Free and Equal Elections Clause”) (new language underlined).

50. This version of the Free and Equal Elections Clause has remained unchanged and undisturbed in the Tennessee Constitution since 1870.⁶

51. Thus, both the poll tax and felon disenfranchisement were key innovations of the 1870 Constitutional Convention. But whereas the poll tax eventually was struck down by the courts and repealed, felon disenfranchisement remains to this day.

52. Eight years after male Tennesseans of color gained the right to vote, very little had changed. Criminal statutes were still being disproportionately used to punish and disenfranchise Black Tennesseans. Samuel Lowry, a Black attorney and member of the Nashville bar writing in April of 1875, noted that the white “radical” Republicans (who had pushed through limited gains for former slaves while they still held power) were now re-trenching with racist Democrats, many of whom were ex-Confederates. Left with no political party representing the interests of Black Tennesseans, Lowry explained:

[T]heir Republican friends were proposing to shake hands with the Democratic party across the bloody chasm. The Negroes resented this treatment, as they felt that they were thereby betrayed and deserted. They disliked having to take back seats on the Federal decoration day. They regarded the Vagrant Act, recently passed by the general assembly, as an engine of discriminating oppression aimed especially toward them. They were excluded from jury service in both the Federal and State courts. As a result, they received scant justice before these tribunals. A white man might steal vast sums of money with impunity, but a Negro was sent to the penitentiary for committing a trifling offence. Under this system, the penitentiaries, jails and workhouses were easily filled with Negroes.

TAYLOR, *supra*, at 114.

⁶ It appears that the first word (“that”) was replaced at some point with the word “the,” but this change is, of course, immaterial.

53. All of this, of course, was in context of the horrific violence being perpetrated against former slaves and other people of color across the South, including in Tennessee. The Ku Klux Klan was formed in 1866 in Pulaski, Tennessee, and shortly thereafter began a campaign of murder and terrorism designed explicitly to keep people of color from exercising their civil rights, particularly their voting rights. *See, e.g.,* TAYLOR, *supra*, at 60 (“The organization quickly took on the character of a body of desperate and lawless men determined to wrest control of the State government from the Radical party by terrorizing and killing Union men and Negroes and preventing the latter especially from exercising the right to vote.”). In 1871, the Tennessee Tribune reported that mass migration of Black Tennesseans was occurring “to seek shelter elsewhere, from the violence, oppression and tyranny which they could not resist, and against which no protection was furnished.” *Id.* at 111.

54. On May 19, 1875, a convention on emigration was convened in Nashville owing in large part to the massive migration of Black Tennesseans out of the state due to violence and political oppression. The convention adopted a preamble and resolutions which read, in part (as summarized by Dr. Taylor, *supra*) as follows:

This document stated that grievous dispensations of such grave nature had been visited upon the Negroes in Tennessee as to make them fearful for the safety of their life and liberty; that present conditions among them were less favorable than those existing during the first years of Negro citizenship. . . . that the considered judgment of the delegates was that the white people of Tennessee were solely responsible for the ills borne by the blacks. In the judgment of these delegates, the whites disregarded laws enacted by the General Government for the protection of Negroes and for their enjoyment of certain rights of citizenship, prevented Negroes from performing jury service even in cases where blacks only were concerned, and discriminated against them in cases brought before the law courts. The respectable elements among the whites, while disposed person ally to accord the Negroes justice, made no effort to prevent the frequent outbreaks of violence against them. Moreover, the highest officials in the State had been powerless to prevent the perpetration of outrages upon the blacks, or to bring the offenders to justice.

The preamble then recited a number of unredressed wrongs which had served to emphasize among the Negroes the insecurity of their life and liberty. It made reference to the lynching of David Jones, at Nashville, in front of the police station, scarcely fifty yards from the court-house; to the murder, in her Trousdale County home, of Julia Hayden, talented school-teacher; to the massacre, by armed outlaws, of sixteen men near Trenton; and to the lynching of Joseph Reed at Nashville, before four thousand people, after he had at first been placed in jail.

Id. at 114-115.

55. The convention document also focused on recent laws, and their application to Black Tennesseans. It noted the recent vagrancy law passed by the legislature, pursuant to which any person of color who could not prove that he or she was employed, was to be incarcerated. *Id.* at 115.

56. As Dr. Stephen Ash noted in MIDDLE TENNESSEE SOCIETY TRANSFORMED 1860-1870: WAR AND PEACE IN THE UPPER SOUTH:

To secure the utter subordination of the freedmen, whites in the postwar era resorted to every weapon and artifice at their command; and they did so with a single-minded determination that rivaled or surpassed their aggressive efforts to retain their slaves Native whites generally maintained a firm grip on the county courthouses during Reconstruction, and they used those institutions as instruments of racial oppression. . . .

[M]any judges and justices of the peace subverted the spirit of the law by willfully resolving every interracial case to the blacks' disadvantage. "The idea of negroes getting justice before the magistrates of this county is perfectly absurd," an indignant Freeman's Bureau agent wrote from Giles in 1866. . . . Traditional administrative and judicial powers of the courts were dusted off and polished up in the postwar years and then brought to bear against the freedmen. . . .

A second traditional legal instrument that assumed a new role after the war was imprisonment. . . .[J]ails became more than just a place of legal custody for black felons; they became also an agent for the social control of the black race. Authorities invoked vagrancy laws, for example, against urban blacks reluctant to sign work contracts with white employers, and they frequently imprisoned blacks for other "crimes" for which no white man ever served time. A Davidson County Freedmen's Bureau agent complained in 1867 that "freedmen are committed to jail on the most frivolous grounds"

“Uppitiness” towards whites was a common excuse for incarceration. The *Herald* reported with some satisfaction in 1870, for example, that a certain Miles Stokes “whose skin is the color of the Fifteenth Amendment,” had received a sentence of six months in prison for the high crime of insulting some white women.”

STEPHEN V. ASH, *MIDDLE TENNESSEE SOCIETY TRANSFORMED 1860-1870: WAR AND PEACE IN THE UPPER SOUTH*, 198-200 (1988) (emphasis added).

F. Tennessee Mirrored the Rest of the South in its Judicial and Extra-Judicial Disenfranchisement of Black People

57. What was happening in Tennessee, of course, mirrored what was happening all across the South.

58. In 1866, an inspector with the Freedman’s Bureau in North Carolina notified a federal military commander that white former rebels in North Carolina “had found new use for longstanding state laws” that imposed infamy (and thus effectively disenfranchisement) for crimes like petty larceny that were punishable by whipping. Steven F. Miller et al., *Between Emancipation and Enfranchisement: Law and the Political Mobilization of Black Southerners, 1865-1867*, 70 *Chi.-Kent L. Rev.* 1059, 1074 (1995) (citing Petition of Wm. C. Watson et al. to Lt. H.C. Strong (July 17, 1866)). Across the state, these rebels “conspired to seize negroes, procure convictions for petty offenses punishable at the whipping post, and thus disqualify them forever from voting in North Carolina.” HOLLOWAY, *LIVING IN INFAMY*, at 33.

59. Contemporary sources describe the whippings in North Carolina as meticulous and widespread. *Harper’s Weekly* described a scene outside a courthouse in Raleigh, N.C. where a crowd of five hundred watched “the public whipping of colored men as fast as they were convicted and sentenced.” *Whipping and Selling American Citizens*, *Harper’s Weekly* (Jan. 12, 1867). *Harper’s* goes on to note that this “sentence of whipping

operates in North Carolina as a civil disqualification, so that none of these victims, according to local law, could ever vote, even if the suffrage were extended to colored men. They are disqualified in advance.” *Id.* (emphasis added). *Atlantic Monthly* also chronicled the incident, explaining that “[t]he public whipping of negroes for paltry offenses is carried on in North Carolina on a large scale,” because “every man who has been publicly whipped is excluded from the right of voting.” *The True Problem*, *Atlantic Monthly* 374 (March 1867). This incident “explains why disenfranchisement for prior criminal convictions was among the first strategies employed to block African American suffrage in North Carolina.” HOLLOWAY, *LIVING IN INFAMY*, at 34.

60. “For white Democrats seeking to regain political power in the South after Reconstruction, [an example in Florida] demonstrated the success of a new scheme to disenfranchise African Americans: denying the right to vote to individuals convicted of minor criminal acts. Between 1874 and 1882 a number of southern states amended their constitutions and revised their laws to disenfranchise for petty theft as a part of a larger effort to disfranchise African American voters and to restore the Democratic Party to political dominance in the region.” HOLLOWAY, *LIVING IN INFAMY*, at 54 (emphasis added). Though scholars have focused on constitutional amendments (e.g., Mississippi in 1890) as evidence of racist intent connected with voting, many have overlooked the fact that these and similar constitutional amendments “were preceded by an effort in the 1870’s to diminish the African American vote by disfranchising for minor property crimes.” *Id.* at 56.

61. Between 1874 and 1882, Mississippi, Alabama, Arkansas, Georgia, South Carolina, Virginia, and Louisiana all adopted laws that were designed and used to disenfranchise Black voters. *Id.* at 57. Mississippi adopted the so-called “Pig Law,” which made theft of

anything over \$10 into a felony, and which was viciously used to disenfranchise Black voters. *Id.* at 57-60. Alabama adopted a similar law in 1875. Also in 1875, Arkansas passed a law declaring theft of anything over \$2 to be grand larceny (i.e., a felony) and thereby adopted a powerful weapon to disenfranchise Black voters. *Id.* at 58. Georgia adopted its own “pig law” in 1875. *Id.* at 59.

62. Opposition to Mississippi’s “Pig Law” was explicitly founded on the racist intent and effect of the law. When the law first came to the Republican governor to sign, he vetoed it, explaining: “Should this bill become a law, persons convicted of stealing any animal therein mentioned, of not more than one or two dollars in value, may be sent to the Penitentiary, perhaps for a term of years. Even if sent for a short time, the person so sentenced is disfranchised.” *Id.* at 60 (emphasis added). About 3 weeks after the governor left office, however, the bill was passed again and the new governor signed it. *Id.* Republicans in Alabama also recognized the threat, petitioning the United States Congress and arguing that they had “discovered the ‘ulterior purposes’ of the increased penalties for petty theft” and declaring that the new laws offered white Democrats “a means to ‘persecute and oppress’ African Americans by making small crimes punishable by incarceration and disfranchisement.” *Id.* at 61.

63. Tennessee adopted its own such law in 1877.

64. In 1858, Tennessee had defined grand larceny (i.e., a felony rendering the person convicted “infamous” and thus depriving them of the right to vote) as the “felonious taking and carrying away personal goods over the value of ten dollars,” a crime punishable by “not less than three nor more than ten years.”⁷ In 1875, Tennessee amended Section 4677 to specify that grand

⁷ *The Code of Tennessee Enacted by the General Assembly of 1857-’8*, Section 4677 of the Criminal Code, available at https://www.google.com/books/edition/Acts_of_the_State_of_Tennessee_Passed_at/wgA5AAAIAAJ at 842.

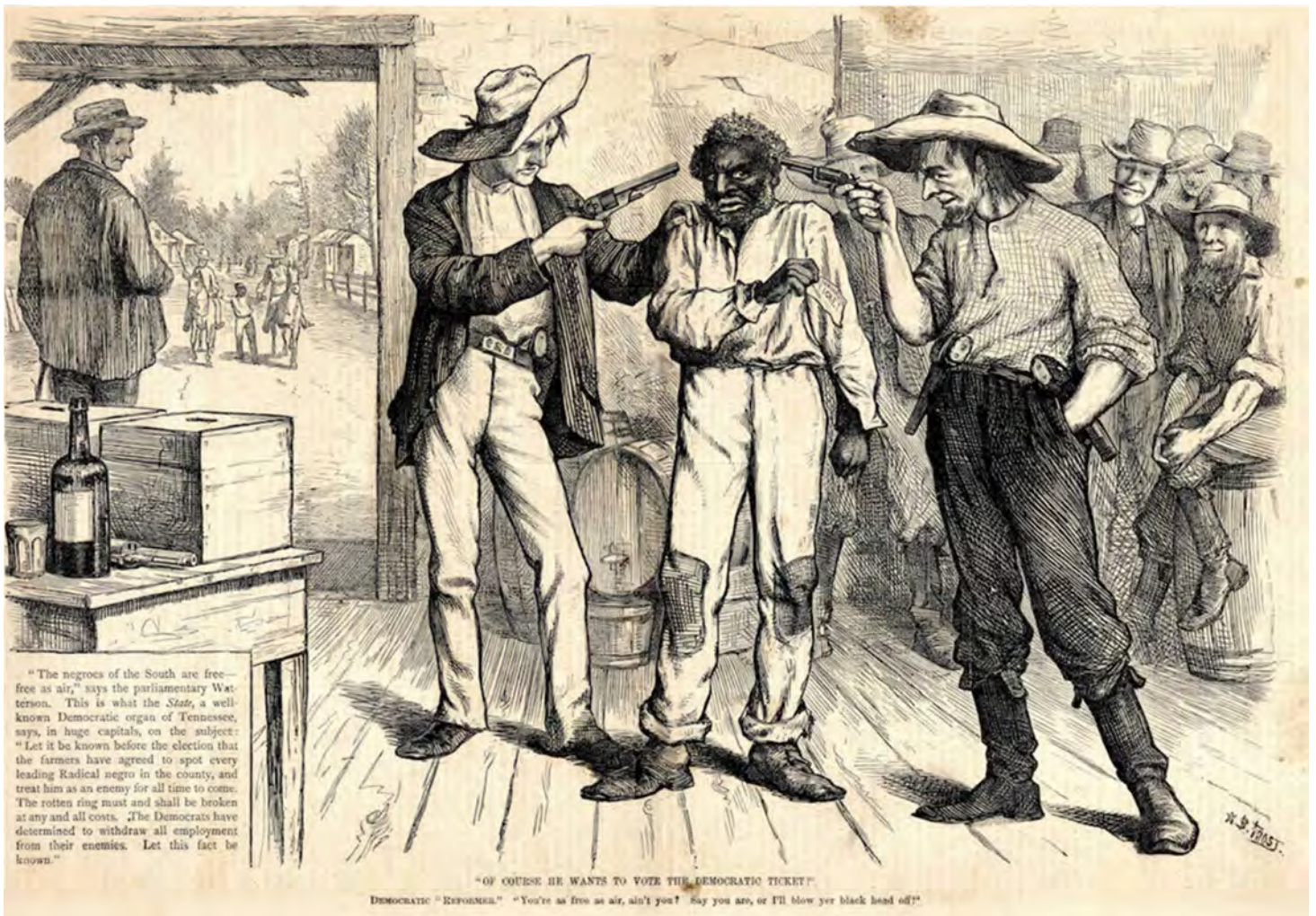
larceny consisted of the “felonious taking and carrying away personal goods over the value of thirty dollars . . .”⁸ This much higher threshold for grand larceny, of course, would make it much more difficult to charge, and much more difficult to use as a means of conviction and disenfranchisement.

65. **However**, in 1877, Tennessee, along with virtually every other Southern state, amended its larceny law so that—just like Mississippi’s Pig Law—Black citizens could be charged with a felony for allegedly taking any property worth over ten dollars.⁹

66. A cartoon in Harper’s Weekly from October 21, 1876 (satirizing a statement in the Tennessee newspaper the *State* that black voters in Tennessee are “free as air”) captures the general consensus of the time, i.e., that Black Tennesseans were free to vote in name only:

⁸ *Acts of The State of Tennessee Passed by the Thirty-Ninth General Assembly, 1875*, available at https://www.google.com/books/edition/Acts_of_the_State_of_Tennessee_Passed_at/pCc5AAAAIAAJ, at 122.

⁹ *Acts of The State of Tennessee Passed by the Fortieth General Assembly, 1877*, available at https://www.google.com/books/edition/Acts_of_the_State_of_Tennessee_Passed_at/oyc5AAAAIAAJ at 78-79 (repealing the 1875 law which made the threshold for grand larceny much higher, and reinstating the prior version of Section 4677).



67. Following the adoption of Tennessee’s “Pig Law” in 1877, in “1889 the Tennessee General Assembly passed four acts of self-described electoral reform that resulted in the disfranchisement of a significant portion of African American voters as well as many poor white voters. The timing of the legislation resulted from a unique opportunity seized by the Democratic Party to bring an end to what one historian described as the most ‘consistently competitive political system in the South.’” *Tennessee Encyclopedia: “Disfranchising Laws,”* TENNESSEE HISTORICAL SOCIETY (2021) (citing Dewey W. Grantham, *Tennessee and Twentieth-Century American Politics*, *Tenn. Historical Quarterly* Vol. 54, No. 3 (Fall 1995), at 210-229)).

68. “. . . Democrats in the state legislature had acted, in 1889 and 1890, to restrict the voting of blacks—and illiterate whites—by enacting a harsh registration law, a poll tax requirement for voting, and a secret ballot law.” Grantham, *supra*, at 211-212.

G. Tennessee Formally Adopts Felony Disenfranchisement in its Laws

69. It was thus that Tennessee’s policy of disenfranchising persons convicted of certain crimes became a tool of race-based political suppression immediately after the Civil War.

70. The Tennessee General Assembly enforced felony disenfranchisement for specific crimes via statute for the first time in 1858.¹⁰ *The Code of Tennessee* (1858)¹¹ (the “1858 Code”) at § 834 (“No person shall vote at any election in this State who has been convicted of bribery, or the offer to bribe, of larceny, or any other offence declared infamous by the laws of this State, unless he has been restored to citizenship in the mode pointed out by law.”) and § 5226 (“Upon conviction of the crimes of abusing a female child, arson, and felonious burning, bigamy . . . it shall be part of the judgment of the court that the defendant be infamous, and be disqualified to give evidence, or to exercise the elective franchise.”).

¹⁰ As of 1836, conviction of an infamous crime prohibited the person convicted from holding office and being examined as a witness (and also constituted good cause for divorce), but did not yet constitute grounds for disenfranchisement. See *A Compilation of the Statutes of Tennessee* (1836), available at https://www.google.com/books/edition/A_Compilation_of_the_Statutes_of_Tennesse/kQZOAQAIAAJ at 1829—Chapter 23, Section 71 (restrictions on holding office and serving as a witness) and 1835—Chapter 26, Section 1 (divorce). See also JEFF MANZA AND CHRISTOPHER UGGEN, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY* at 237-239 (2008) (identifying 1871 as the year of Tennessee’s first across-the-board felon disenfranchisement law (as opposed to disenfranchisement for specific crimes)).

¹¹ Available at https://www.google.com/books/edition/The_Code_of_Tennessee/3bgwAQAAIAAJ

71. Critically, however, there was no permanent disenfranchisement. *See id.* § 1994 (“Persons rendered infamous, or deprived of the rights of citizenship, by the judgment of a court, may be restored by the Circuit Court; those pardoned, immediately after the pardon; those convicted of murder in the second degree, voluntary manslaughter, malicious maiming or wounding, fighting a duel, carrying a challenge to fight a duel, publishing a person as a coward for refusing to fight a duel, of refusing to give up the author of such publication, after the lapse of six months; and all others after the lapse of three years from conviction.”) (emphasis added).

72. Tennesseans who had lost their rights of citizenship could regain such rights by petitioning the Circuit Court. *Id.* at § 4228 (“[The Circuit Courts] have exclusive jurisdiction to hear and determine applications to be restored to citizenship, made by persons who have been rendered infamous by the judgment of any court of this State.”).¹²

73. Tennessee—in addition to adopting a poll tax in 1870¹³—began to greatly expand its felon disenfranchisement laws after the Civil War. In the 1869 Act calling for a constitutional convention, only “male person[s] not convicted and rendered infamous for crime” were

¹² The first statute providing for the ability to petition to regain one’s rights appears to have been enacted in 1840 in an Act permitting citizens of the State who had “been rendered infamous by the judgment of the courts” ten years previous to the passage of the act to petition to Circuit Courts to “restore such person to the full rights of citizenship,” though this act did not mention voting as one of those rights to be restored (or that had been taken away). *See Acts Passed at the First Session of the Twenty-Third General Assembly*, available at https://www.google.com/books/edition/Acts_of_the_State_of_Tennessee_Passed_at/wgA5AAAAIAAJ at 245. This Act was amended in 1844, *see Acts Passed at the First Session of the Twenty-Fifth General Assembly*, available at https://www.google.com/books/edition/Acts_of_the_State_of_Tennessee_Passed_at/xQA5AAAAIAAJ at 174, and again in 1854. *See Acts Passed at the First Session of the Twenty-Fifth General Assembly*, available at https://www.google.com/books/edition/Acts_of_the_state_of_tennessee_passed_by/feMxAAAAIAAJ at 107.

¹³ *See An Act to Regulate the Elective Franchise in accordance with Article IV, Section 1, of the Constitution of the State*, June 11, 1870, which held that “each voter shall give the Judges of election when and where he offers his vote, satisfactory evidence that he has paid the poll taxes assessed against him . . .” amended in 1871. Available at: https://www.google.com/books/edition/Acts_of_the_State_of_Tennessee_Passed_at/6804AAAAIAAJ at 135.

permitted to vote for or against a convention to amend the Tennessee Constitution. *An Act to Authorize the People to Call a Convention, and for other purposes*, Nov. 15, 1869.¹⁴

74. Tennessee's expansion of its felony disenfranchisement laws following the Civil War was not unique. Many former Confederate states expanded the scope of criminal history-based disenfranchisement after 1865 to cover most or all felony convictions in an effort to suppress the political power of newly freed slaves. *See* MANZA & UGGEN, *LOCKED OUT*, at 49-53; *see also id.* at 237-239 (listing the year of each state's first felony disenfranchisement law); *Notes from the Capital*, N.Y. TIMES, Oct. 11, 1875, at 5 (explaining that the "evident purpose" of statutory changes in North Carolina was "to prevent colored men and poor white men from exercising the right of suffrage"). Indeed, "felon voting restrictions were the first widespread set of legal disenfranchisement measures imposed on African Americans; the literacy tests and other mechanisms for political exclusion followed at a later date." Daniel S. Goldman, *The Modern-Day Literacy Test: Felon Disenfranchisement and Race Discrimination*, 57 *Stan. L. Rev.* 611, 625 (2004).

75. These disenfranchisement laws proliferated as the imprisonment of African Americans increased. By the 1870s, nearly 95% of persons with felony convictions in southern states were African American. *See* CHRISTOPHER ADAMSON, *PUNISHMENT AFTER SLAVERY: SOUTHERN PENAL SYSTEMS, 1865-1890* (1983).

76. As one scholar has noted, "Disenfranchisement policies have served various political purposes, most notably racial exclusion. In the post-Reconstruction period, coincident with the advent of poll taxes and literacy requirements, legislators in a number of southern states tailored their disenfranchisement statutes with the specific intent of

¹⁴ https://www.google.com/books/edition/Acts_Passed_at_the_General_Assembly_of_t/nyZAAQAAMAAJ at 119.

excluding the newly freed black voters. They accomplished this by tying the loss of voting rights to crimes alleged to be committed primarily by blacks while excluding offenses held to be committed by whites.” Marc Mauer, *Felon Disenfranchisement: A Policy Whose Time Has Passed?* 31 Hum. Rrts. 16, 17 (2004).

77. Tennessee adopted permanent felon disenfranchisement for certain crimes in 1986 and expanded the list in 2006.¹⁵

II. Felony Disenfranchisement Continues to Suppress the Political Power of Black Tennesseans and Results in Differential Treatment of Black Tennesseans, Including Plaintiff

78. Tennessee has two current statutes that permanently disenfranchise Tennesseans convicted of certain crimes. T.C.A. § 40-29-105(c)(2)(B) states:

(B) A person convicted of an infamous crime may petition for restoration upon the expiration of the maximum sentence imposed by the court for the infamous crime; provided, that a person convicted of murder, rape, treason or voter fraud shall never be eligible to register and vote in this state;

T.C.A § 40-29-204 (“Persons ineligible to register and vote”) states:

Notwithstanding this part, the following persons shall never be eligible to register and vote in this state:

(1) Those convicted after July 1, 1986, of the offenses of voter fraud, treason, murder in the first degree, or aggravated rape;

(2) Those convicted after July 1, 1996, but before July 1, 2006, of any of the offenses set out in subdivision (1) or any other degree of murder or rape; and

(3) Those convicted on or after July 1, 2006, of:

(A) Any of the offenses set out in subdivision (1) or (2);

¹⁵ Ironically, this expansion was in the context of an attempt—ostensibly—to streamline the rights restoration process and as such, may have represented a devil’s bargain with respect to voting rights. The certificate of rights restoration process adopted in 2006 is currently being challenged in federal court as “opaque, decentralized, inaccurate, . . . inaccessible” and unconstitutional under the Due Process and Equal Protection clauses of the Fourteenth Amendment, the Twenty-Fourth Amendment, and the National Voter Registration Act. *See Tennessee Conference of the NAACP et al. v. Lee et al.*, Case No. 3:20-cv-1039, United States District Court for the Middle District of Tennessee, Nashville Division (Campbell, J.).

(B) Any other violation of title 39, chapter 16, parts 1, 4 or 5 designated as a felony or any violation containing the same elements and designated as a felony in any other state or federal court; or

(C) Any sexual offense set out in § 40-39-202 or violent sexual offense set out in § 40-39-202 that is designated as a felony or any violation containing the same elements and designated as a felony in any other state or federal court and where the victim of the offense was a minor.

(T.C.A. §§ 40-29-105, 204 (collectively, the “Permanent Disenfranchisement Statutes”).)

79. Although the Tennessee Constitution authorizes the General Assembly to pass laws excluding from the right of suffrage persons who may be convicted of infamous crimes, *see* Art. IV § 2, the General Assembly’s statutes must comply with all parts of the Tennessee Constitution, as well as relevant law.

A. Plaintiff Has Been Unconstitutionally Disenfranchised Due to Her Unknowing, Unadvised Plea to an Opaque and Unsupported Charge

80. A guilty plea must be voluntarily, understandingly, and knowingly entered to pass constitutional muster. *Howell v. State*, 185 S.W.3d 319, 330 (Tenn. 2006). “In examining whether a guilty plea was knowingly and voluntarily entered, the standard is ‘whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.’ The trial court may consider a number of factors in making this determination. These factors include: 1) the defendant’s relative intelligence; 2) the defendant’s familiarity with criminal proceedings; 3) the competency of counsel and the defendant’s opportunity to confer with counsel about alternatives; 4) the advice of counsel and the court about the charges and the penalty to be imposed; and 5) the defendant’s reasons for pleading guilty, including the desire to avoid a greater penalty in a jury trial.” *Id.* at 330-31.

81. The conviction at issue in this matter, tampering with evidence in violation of T.C.A. § 39-16-503, is one of the offenses automatically resulting in permanent disenfranchisement under T.C.A. § 40-29-204.

82. The basis for the charge, as discussed by the Assistant District Attorney with the trial court, was as follows:

MR. PHILLIPS: . . . In this case it was on or about February 1st, 2014, the defendant in fact did tamper with or fabricate evidence when she was sending off forms trying to get Judge Gardner in trouble for the prior holding her in contempt. She had a notary public form which she actually fabricated. She actually made up and added the seal. Made it look like it was official. It was not notarized. That witness actually would have testified at trial that that was not his stamp, that was not his signature. That also makes it under the same Count 2, forgery under a thousand. She forged this document as well as used it, forged his signature, forged the notary seal. This was also confirmed. I don't remember the department but there was somebody in Nashville at the capital that actually spoke to Special Agent Ryan Fletcher with the FBI or the TBI. He's the one that actually investigated these claims under this indictment. He did confirm that that was in fact a forged notary seal. And, again, that was in the official investigation.

THE COURT: All right. On the tampering, what was that tampering with --

MR. PHILLIPS: The tampering was where she actually changed the form over to look like it was official. She made that -- as far as when she sent it in it was actually fabricating would be the tampering with or fabricating of evidence. With respect to Count 3 --

THE COURT: What was the potential evidence?

MR. PHILLIPS: The tampering?

THE COURT: Yes.

MR. PHILLIPS: The tampering was where she actually -- she basically used that document and I have everything in the file.

THE COURT: Is that the official charge, tampering with evidence?

MR. PHILLIPS: Yes, Your Honor.

THE COURT: How was it to be used as evidence?

MR. PHILLIPS: We were going to show that she tampered with -- she actually made up the form and she changed -- somehow used a notary public's form to -- once she was in the official investigation, she actually used that and changed it over where --

THE COURT: There's going to be evidence in what trial?

MR. PHILLIPS: I'm sorry. That would be in the trial under Indictment Number -- that would -- I believe they weren't asking for a severance though. It would be indictment number ending in 502, Your Honor.

Transcript of Proceedings, *State v. Moses*, April 29, 2015, attached as **Exhibit 1** at 11-13 (emphasis added).

83. Critically, this explanation by the Assistant District Attorney did not support the charge. Tampering with evidence was one of four charges listed in Indictment No. 14-06502 (referred to by ADA Phillips as “the indictment number ending in 502”). However, the charge of tampering with evidence—as clearly indicated by the Judge—requires the allegedly tampered with document to be *evidence in another case or proceeding*. Here, ADA Phillips indicated that the tampering with evidence charge was for “evidence” in the same indictment in which it was charged. This is insufficient as a matter of law. Moreover, this charge—as indicated by the transcript—was clearly cumulative of the forgery charge.

84. If, for example, Plaintiff had only been charged with forgery, rather than forgery *and* tampering with evidence, she would not have been permanently disenfranchised. The fact that decades of Plaintiff's ability to vote rested on a minor charging decision that was entirely discretionary with the District Attorney's Office shocks the conscience.

85. Plaintiff was sentenced to three years for the tampering with evidence charge and was not, even then, notified of her permanent disenfranchisement. It was not until years later, when attempting to regain her voting rights, when she realized the impact of the guilty plea years earlier.

86. Plaintiff pled guilty to an inappropriate and unsupported charge while at the same time permanently forfeiting her right to vote. This was a blatant violation of her due process rights and the Tennessee Constitution which cries out for relief.

CLAIMS FOR RELIEF

COUNT ONE

Facial Violation of Tennessee's Free Elections Clause, Art. I, § 5

87. Plaintiff hereby incorporates all other paragraphs as if fully set forth herein.

88. Article I, Section 5 of the Tennessee Constitution, which has no counterpart in the United States Constitution, provides that the “elections shall be free and equal, and the right of suffrage, as hereinafter declared, shall never be denied to any person entitled thereto, except upon conviction by a jury of some infamous crime, previously ascertained and declared by law, and judgment thereon by court of competent jurisdiction” (the “Free and Equal Clause”). The “free and equal” part of this clause has been present since the original 1796 Tennessee Constitution, which read: “That Elections shall be free and equal.” Const. of 1796, Art. XI § 5.

89. As the Tennessee Supreme Court has noted, the “same constitutional provisions that guarantee the right to vote also charge the state with ensuring that elections are ‘free and equal’” *City of Memphis v. Hargett*, 414 S.W.3d 88, 103 (Tenn. 2013).

90. Tennessee's Permanent Disenfranchisement Statutes permanently deny thousands of Tennesseans their constitutional right to vote, in violation of the Free and Equal Clause.

91. One of Tennessee's Permanent Disenfranchisement Statutes, T.C.A. § 40-29-204, denies the right to vote permanently for certain classes of people, including those convicted of solicitation of unlawful compensation, T.C.A. § 39-16-104; receiving unlawful compensation, *id.*; official misconduct, T.C.A. § 39-16-402; receiving a benefit “not otherwise authorized by

law,” *id.*; making a false report to law enforcement, T.C.A § 39-16-502; and a variety of other offenses.

92. These statutes, and their predecessors, were used intentionally and disproportionately to disenfranchise Black Tennesseans. They still do so today, and have had a massive and deleterious effect on the ability of all Tennesseans, but especially of Black Tennesseans, to have their voice heard in our “free and equal” elections and to participate in our government and society.

93. Just as the King of England in the 1600’s influenced elections by manipulating the eligible electorate, Tennessee’s statutory scheme permanently disenfranchising thousands of Tennesseans restricts Tennessee’s electorate.

94. In so doing, Tennessee’s Permanent Disenfranchisement Statutes violate the Free Election Clause’s guarantee that elections in Tennessee must express the “will of the majority” and not subvert the election process such that the arbitrary will of the minority rules.¹⁶ These statutes deny the right to vote to roughly 451,000 Tennessee voting-age citizens who are currently living in Tennessee communities, either on some form of probation or post-release supervision, or having served their sentence. A substantial percentage of these citizens are permanently disenfranchised. Particularly given the narrow margins of many Tennessee elections, the Permanent Disenfranchisement Statutes prevent the “will of the majority” from prevailing.

COUNT TWO

Facial Violation of Tennessee’s Equal Protection Guarantee, Art. I § 8 & Art. XI, § 8

95. Plaintiff hereby incorporates all other paragraphs as if fully set forth herein.

¹⁶ See, e.g., *Browning v. Gray*, 137 Tenn. 70, 191 S.W. 525, 526 (1917).

96. The Tennessee Constitution guarantees equal protection of the laws of Tennesseans via, *inter alia*, Article I § 8 and Article XI § 8 (the “Equal Protection Guarantee”). Moreover, Article IV § 1 of the Tennessee Constitution requires that requirements to vote “shall be equal and uniform across the state” and that there “shall be no other qualification attached to the right of suffrage.” These provisions make the guarantee of equal protection in Tennessee’s Constitution particularly and acutely applicable to restrictions on voting.

97. The right to vote on equal terms is therefore a fundamental right in the State of Tennessee.

98. Tennessee’s Permanent Disenfranchisement Statutes violate the Equal Protection Guarantee because they disenfranchise persons convicted of felonies on a disparate basis. Some persons are disenfranchised permanently, while others may regain their voting rights through an established process. This differential treatment and cannot withstand any level of constitutional scrutiny.

99. Strict scrutiny applies to this classification. Defendants cannot provide any legitimate government interest—let alone a compelling government interest—in permanently denying the right to vote to so many Tennesseans. There is no legitimate justification for denying the right to vote to thousands of citizens who are living amongst society and whose lives will be governed by the laws enacted and enforced by elected officials. Nor are Tennessee’s Permanent Disenfranchisement Statutes narrowly tailored to any conceivable government interest.

100. By permanently disenfranchising so many citizens, the General Assembly has violated Equal Protection Clause of the Tennessee Constitution.

COUNT THREE

Facial Violation of Tennessee’s Equal Protection Guarantee, Art. I § 8 & Art. XI, § 8

101. Plaintiff hereby incorporates all other paragraphs as if fully set forth herein.

102. Tennessee’s Permanent Disenfranchisement Statutes also violate the Equal Protection Guarantee because the statutes have the intent and effect of discriminating against Black Tennesseans. The continued permanent disenfranchisement of thousands of people disproportionately impacts Black Tennesseans and deprives Black communities of substantially equal voting power. This differential treatment and cannot withstand any level of constitutional scrutiny.

103. Strict scrutiny applies to this classification. Defendants cannot provide any legitimate government interest—let alone a compelling government interest—in permanently denying the right to vote to so many Tennesseans. There is no legitimate justification for denying the right to vote of thousands of citizens who are living amongst society and whose lives will be governed by the laws enacted and enforced by elected officials. Nor are Tennessee’s Permanent Disenfranchisement Statutes narrowly tailored to any conceivable government interest.

104. By permanently disenfranchising so many citizens, the General Assembly has violated Equal Protection Clause of the Tennessee Constitution.

COUNT FOUR
Facial Violation of Tennessee’s Cruel and Unusual Punishment Clause, Art. I § 16

105. Plaintiff hereby incorporates all other paragraphs as if fully set forth herein.

106. The Tennessee Constitution guarantees that “excessive bail shall not be required, no excessive fines imposed, nor cruel and unusual punishments inflicted.” Art. I § 16.

107. Tennessee’s Permanent Disenfranchisement Statutes constitute cruel and unusual punishment in violation of the Tennessee Constitution, Art. I § 16, in that they are penal in nature yet do not comport with contemporary standards of decency, are grossly disproportionate to the offenses involved, and go beyond what is necessary to accomplish any legitimate penological objective.

108. The Tennessee Supreme Court has recognized that, although Article I § 16 of the Tennessee Constitution parallels the Eighth Amendment to the Federal Constitution, “this does not foreclose an interpretation of the language of Article I, § 16, more expansive than that of the similar federal provision.” *State v. Black*, 815 S.W.2d 166, 188 (Tenn. 1991). Moreover, “[h]istorical and legislative acceptance of a mode of punishment, while significant, should not be dispositive when deciding whether a punishment violates Tennessee’s constitutional prohibition against cruel and unusual punishment. To so hold would both limit the organic law of the constitution to the moral sentiments of its drafters and risk subjecting individuals to the abuse of legislative power.” *Id.* Thus, the “very generality of the terms ‘cruel and unusual’ indicates that, like the framers of the Federal Constitution, the authors of Tennessee’s fundamental law delegated the task of defining these terms to the courts.” *Id.* at 188-89.

109. Tennessee has adopted a three-prong analysis for determining whether a punishment constitutes cruel and unusual punishment under Art. 1 § 16 of the Tennessee Constitution: “First, does the punishment for the crime conform with contemporary standards of decency? Second, is the punishment grossly disproportionate to the offense? Third, does the punishment go beyond what is necessary to accomplish any legitimate penological objective?” *Van Tran v. State*, 66 S.W.3d 790, 800 (Tenn. 2001) (citing *State v. Black*, *supra*). Moreover, the first *Black* factor, whether the punishment conforms with contemporary standards of decency, is arguably the most crucial in a negative sense; generally speaking, if a punishment fails to conform with contemporary standards of decency, it is unconstitutional. *Van Tran*, 66 S.W.3d at 801.

110. Permanent disenfranchisement for any felony, but particularly for felonies not traditionally excluded from the franchise (e.g., murder and treason), does not comport with contemporary standards of decency.

111. Permanent disenfranchisement for any felony, but particularly for felonies not traditionally excluded from the franchise (e.g., murder and treason), is grossly disproportionate to such offenses.

112. Permanent disenfranchisement for any felony, but particularly for felonies not traditionally excluded from the franchise (e.g., murder and treason), does not accomplish any legitimate any penological objective.

113. Permanent disenfranchisement for any felony, but particularly for felonies not traditionally excluded from the franchise (e.g., murder and treason), even if *theoretically* connected to some legitimate any penological objective, goes well beyond what is necessary to accomplish any such legitimate penological objective.

114. Thus, by permanently disenfranchising so many citizens, the General Assembly has violated Cruel and Unusual Punishment Clause of the Tennessee Constitution.

COUNT FIVE
Facial Violation of Tennessee’s Due Process Guarantees, Art. I § 8

115. Plaintiff hereby incorporates all other paragraphs as if fully set forth herein.

116. “Early in Tennessee’s judicial history, this Court determined that persons invested with the right to vote can be deprived only ‘by due process of law.’” *May v. Carlton*, 245 S.W.3d 340, 346 (Tenn. 2008).

117. “The overarching principle of procedural due process requires ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’ . . . Or, stated another way,

procedural due process ensures that litigants are ‘given an opportunity to have their legal claims heard at a meaningful time and in a meaningful manner.’” *In re Walwyn*, 531 S.W.3d 131, 138 (Tenn. 2017).

118. “Substantive due process, unlike procedural due process, ‘bars oppressive government action regardless of the fairness of the procedures used to implement the action.’” *Id.* at 138–39. “Substantive due process claims may be divided into two categories: (1) deprivations of a particular constitutional guarantee and (2) actions by the government which are ‘arbitrary[] or conscience[]shocking in a constitutional sense.’” *Id.*

119. The General Assembly’s statutes must comply with all parts of the Tennessee Constitution, as well as relevant law. By permanently disenfranchising citizens when they plead guilty to felonies subject to the Permanent Disenfranchisement Statutes without notice, the General Assembly has violated the Due Process Guarantee of the Tennessee Constitution, both substantively and procedurally.

COUNT SIX

As-Applied Violation of Tennessee’s Free Elections Clause, Art. I, § 5

120. Plaintiff hereby incorporates all other paragraphs as if fully set forth herein.

121. As explained above, the Free and Equal Clause is designed to safeguard the power of the people as specifically enumerated in the Tennessee Constitution. The Permanent Disenfranchisement Statutes are depriving Plaintiff of her right to participate in elections such that elections, by definition, are neither free nor equal. Plaintiff is being deprived of her right to participate in our government and society because of her unconstitutional permanent disenfranchisement.

122. “An as-applied constitutional challenge to a statute requires the Court to examine how the statute operates against a particular litigant in light of the specific facts of the case.” *Pinkard v. HCA Health Servs. of Tennessee, Inc.*, 545 S.W.3d 443, 450 (Tenn. Ct. App. 2017).

123. In Plaintiff’s case, given the specific facts and circumstances of her guilty plea, the uncertain factual support for her conviction, the failure to warn her that by pleading guilty she would be permanently disenfranchised, and the fact that the Permanent Disenfranchisement Statutes and their predecessors were enacted with the intent, and effect of, discrimination against Black persons—a class to which Plaintiff belongs—her constitutional right to a free and fair election means that the Permanent Disenfranchisement Statutes are unconstitutional as applied to her.

COUNT SEVEN

As-Applied Violation of Tennessee’s Due Process Guarantees, Art. I § 8

124. Plaintiff hereby incorporates all other paragraphs as if fully set forth herein.

125. On or about April 29, 2015, Plaintiff was convicted of tampering with evidence in violation of T.C.A. § 39-16-503.

126. Upon conviction of this charge, Plaintiff became automatically and permanently ineligible to vote in the State of Tennessee, on penalty of felony conviction.

127. At no time before her plea was entered and accepted by the Court was Plaintiff informed that pleading guilty would mean that she would be permanently disenfranchised under Tennessee law.

128. At no time before her plea was entered and accepted by the Court was Plaintiff informed that pleading guilty would result in a definite, immediate, and automatic effect on her right to vote.

129. Upon conviction, Plaintiff's right to vote was automatically and permanently revoked.

130. The General Assembly's statutes must comply with all parts of the Tennessee Constitution, as well as relevant law. By failing to give Plaintiff notice that she would be permanently disenfranchised by pleading guilty to tampering with evidence, Plaintiff's rights under the Due Process Guarantee of the Tennessee Constitution, both substantively and procedurally, were violated.

COUNT EIGHT

As-Applied Violation of Tennessee's Cruel and Unusual Punishment Clause, Art. I § 16

131. Plaintiff hereby incorporates all other paragraphs as if fully set forth herein.

132. Tennessee's Permanent Disenfranchisement Statutes constitute cruel and unusual punishment in violation of Tennessee's constitution, Art. I § 16 as applied to Plaintiff.

133. The permanent disenfranchisement of Plaintiff does not comport with contemporary standards of decency. As described above, Plaintiff's plea and conviction was rife with uncertainty, was unsupportable as a matter of fact and law, and was clearly cumulative of the other charges leveled against Plaintiff (including but not limited to the forgery charge). Plaintiff long ago served the sentence related to her wrongful conviction, and to suffer decades of disenfranchisement (i.e., for the rest of her life) plainly violates contemporary standards of decency and proportionality. Contemporary standards are focused on rehabilitation of formerly incarcerated persons, particularly and specifically including re-enfranchisement.

134. The permanent disenfranchisement of Plaintiff is grossly disproportionate to the offense involved which, based on the facts, involved a document of questionable authenticity which was not actually going to be used as evidence in any other case or proceeding. Plaintiff

received a sentence of only three years for this offense, but is being subjected to a lifetime ban on voting as a result.

135. The permanent disenfranchisement of Plaintiff goes well beyond what is necessary to accomplish any legitimate penological objective. Plaintiff served her sentence for this particular charge, and has suffered the penological consequences thereof. To burden a fundamental right with a lifetime ban bears no relationship to any government objective, rational, compelling, or otherwise.

COUNT NINE

As-Applied Violation of Tennessee's Equal Protection Guarantee, Art. I § 8 & Art. XI, § 8

136. Plaintiff hereby incorporates all other paragraphs as if fully set forth herein.

137. As applied to Plaintiff, Tennessee's Permanent Disenfranchisement Statutes violate the Equal Protection Guarantee because they disenfranchise her on a disparate basis as compared to other persons convicted of felonies with the same or similar elements and/or sentences. Plaintiff was disenfranchised permanently, while others similarly situated may regain their voting rights through an established process. This differential treatment and cannot withstand any level of constitutional scrutiny.

138. Strict scrutiny applies to this classification. Defendants cannot provide any legitimate government interest—let alone a compelling government interest—in permanently denying the right to vote to Plaintiff. There is no legitimate justification for denying Plaintiff, along with thousands of other Tennesseans, the right to vote. Nor are Tennessee's Permanent Disenfranchisement Statutes narrowly tailored to any conceivable government interest.

139. By permanently disenfranchising Plaintiff, the General Assembly has violated the Equal Protection Clause of the Tennessee Constitution.

COUNT TEN

As-Applied Violation of Tennessee’s Equal Protection Guarantee, Art. I § 8 & Art. XI, § 8

140. Plaintiff hereby incorporates all other paragraphs as if fully set forth herein.

141. As applied to Plaintiff, Tennessee’s Permanent Disenfranchisement Statutes also violate the Equal Protection Guarantee because the statutes have the intent and effect of discriminating against Black Tennesseans, of which class Plaintiff is a member. The continued permanent disenfranchisement of thousands of people disproportionately impacts Black Tennesseans, including Plaintiff, and deprives the Black community, including Plaintiff, of substantially equal voting power. This differential treatment and cannot withstand any level of constitutional scrutiny.

142. Strict scrutiny applies to this classification. Defendants cannot provide any legitimate government interest—let alone a compelling government interest—in permanently denying the right to vote to Plaintiff. There is no legitimate justification for denying Plaintiff, along with upwards of 451,000 other Tennesseans, the right to vote. Nor are Tennessee’s Permanent Disenfranchisement Statutes narrowly tailored to any conceivable government interest.

143. By permanently disenfranchising Plaintiff, the General Assembly has violated Equal Protection Clause of the Tennessee Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants and,

- a. Declare that T.C.A. § 40-29-105 and § 40-29-204 are facially unconstitutional and invalid under the Tennessee Constitution’s Free and Equal Clause, Art. I, § 5; Equal Protection Guarantees, Art. I § 8 & Art. XI, §

8; Due Process Guarantees, Art. I § 8; and Cruel and Unusual Punishment Clause, Art. I § 16;

- b. Declare that T.C.A. § 40-29-105 and § 40-29-204 are unconstitutional and invalid under the Tennessee Constitution's Free and Equal Clause, Art. I, § 5; Equal Protection Guarantees, Art. I § 8 & Art. XI, § 8; Due Process Guarantees, Art. I § 8; and Cruel and Unusual Punishment Clause, Art. I § 16 as to Plaintiff;
- c. Declare that Plaintiff is therefore eligible to restore her right to vote consistent with the provisions of T.C.A. § 40-29-201 *et seq.* or other process hereafter provided and thereafter register to vote and vote in Tennessee elections;
- d. Direct Defendants, their agents, officers, and/or employees to immediately restore Plaintiff's right to vote and permit her to register to vote and vote in Tennessee elections;
- e. Enjoin Defendants, their agents, officers, and employees from preventing Tennessee citizens released from incarceration or not sentenced to incarceration related to any of the Permanent Disenfranchisement Statutes from registering to vote and exercising the right to vote based on their felony conviction;
- f. Require Defendants, their agents, officers, and employees to notify all people with past felony convictions under either of the Permanent Disenfranchisement Statutes who have already been released from incarceration or are released from incarceration in the future that they may

- lawfully regain their voting rights under the statutory method for doing so and that they may register to vote and vote in Tennessee elections;
- g. Require Defendants, their agents, officers, and employees to engage in and take such additional steps as this Court deems just and appropriate to ensure that affected citizens are informed of their restored rights and are able to register to vote and vote in Tennessee elections; and
- h. Grant Plaintiff such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

/s/ John E. Haubenreich

John E. Haubenreich, # 029202
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, TN 37219
Telephone: (615) 244-6380
Facsimile (615) 244-6804
John.Haubenreich@wallerlaw.com

Counsel for Plaintiff

EXHIBIT 1

W/2015-01240-CCA-R3-CP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
THIRTIETH JUDICIAL DISTRICT OF MEMPHIS
DIVISION 3

THE STATE OF TENNESSEE,
Plaintiff,

vs.

PAMELA MOSES,
Defendant



ORIGINAL

CASE NO.: 14-06502,
15-00740, 15-00884,
14-05903

11-13-15
Richard DeSaussure, Clerk
BY [Signature] D.C.

GUILTY PLEA
APRIL 29TH, 2015

THE HONORABLE J. WEBER MCCRAW, PRESIDING JUDGE

APPEARANCES

FOR THE STATE:

BRYCE PHILLIPS
Assistant District Attorney General
Shelby County District Attorney's Office
201 Poplar Avenue - 3rd Floor
Memphis, Tennessee 38103

FOR THE DEFENDANT:

JOSIE HOLLAND
Attorney at Law
242 Poplar Avenue
Memphis, Tennessee 38103

TED JONES
Attorney at Law
2670 Union Avenue Extended
Memphis, Tennessee 38112

SHELBY COUNTY CRIMINAL COURT
INDICTMENT # 14-05903, 14-06502, 15-00884

STATE OF TENNESSEE
VS.
PAMELA MOSES

VOLUME 4 OF 5 VOLUMES
TRANSCRIPT OF EVIDENCE

FILED
JAN 12 2016
Clerk of the Courts
Rec'd By

Vol. 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TABLE OF CONTENTS

PAGE_

STYLE AND APPEARANCE	1
TABLE OF CONTENTS	2
CAPTION	3
STATEMENT OF FACTS BY MR. PHILLIPS	3
STIPULATION BY MR. JONES	16
STIPULATION BY MS. HOLLAND	19
VOIR DIRE OF PAMELA MOSES	
By The Court	22
COURT'S SENTENCE	38
COURT REPORTER'S CERTIFICATE	51

1 IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

2 THIRTIETH JUDICIAL DISTRICT OF MEMPHIS
3 DIVISION 3

4 THE STATE OF TENNESSEE,)
5 Plaintiff,)
6 vs.) CASE NO.: 14-06502,
7 PAMELA MOSES,) 15-00740, 15-00884,
8 Defendant,) 14-05903
)
)

9 This cause came on to be heard and was
10 heard on the 29th day of April, 2015, before the
11 Honorable J. Weber McCraw, Judge, holding Criminal Court
12 for Shelby County at Memphis, Tennessee.

13 The following proceedings were had, to wit:

14 * * * * *

15
16 MR. PHILLIPS: State of Tennessee versus
17 Pamela Moses. We have a guilty plea for Your Honor's
18 consideration. Subject to the Court's approval she's
19 pleading guilty with respect to the one Mr. Jones is
20 representing her on, that's Indictment 14-05903, theft
21 of property under \$500 involving merchandise. That is
22 an (A) Misdemeanor. Subject to the Court's approval
23 she's pleading guilty to that. And the penalty is going
24 it be 11 months and 29 days in jail with that being
25 suspended with up front probation set to began today.

1 Count 2 is an alternative theory for the theft
2 of property under 500. That will be nolle prossed at no
3 cost as part of the negotiated plea. With respect to
4 the large indictment, the one with 10 counts, that's
5 Indictment Number 14-06502, the defendant, Ms. Moses, is
6 represented by counsel, Ms. Holland, on that appointed
7 by the Court. She is pleading guilty to Count 1 which
8 is tampering with evidence as a (C) Felony. Subject to
9 the Court's approval she's pleading guilty to three
10 years as Range I Standard 30 percent offender.

11 They're asking for up front probation on that.
12 That would be consecutive to all other counts of that
13 indictment as well as the indictment number we will
14 later read and that's -- make sure I have it.
15 Indictment Number 15-00884, that's going to be the
16 escape charge.

17 THE COURT: That's consecutive to the theft as
18 well as to the escape?

19 MR. PHILLIPS: I believe, Judge. I'm sorry.
20 I apologize. It's concurrent to the Indictment
21 14-05903 which is the theft. I think that's the only
22 one that's running concurrent but consecutive to all
23 counts. I'm about to read into the escape --

24 THE COURT: Consecutive to everything but
25 theft?

1 MR. PHILLIPS: Yes, sir. Exactly, Your Honor.

2 THE COURT: Go ahead.

3 MR. PHILLIPS: Thank you. With respect to the
4 forgeries, Count 2 under \$1000, it's an (E) Felony,
5 she's pleading guilty to two years as a Range I, 30
6 percent offender. Again, the State is recommending up
7 front probation on that beginning today. And that would
8 be, again, Range I 30 percent consecutive to all other
9 counts under that indictment as well as the Indictment
10 15-00884, escape. Concurrent to the theft of property.

11 Under Count 3, that is simple perjury or
12 perjury. It is (A) Misdemeanor. She's pleading guilty
13 to that, 11 months and 29 days. Again, we're requesting
14 up front probation on that consecutive to all other
15 counts of that indictment as well as the aforementioned
16 indictment for escape ending in 884.

17 With respect to Count 4 -- and I'm sorry. I
18 read that wrong. There was numbers written by it but
19 that -- the tampering was Count 1. The forgery was
20 Count 2. And I believe Count 3 was actually
21 retaliation for a past action. I do apologize, Your
22 Honor. That in retaliation is nolle prossed at no cost
23 as part of the negotiated plea. So that would make
24 perjury that was 11 months and 29 days all the same
25 conditions but it's actually listed as Count 4.

1 THE COURT: Is that perjury or aggravated
2 perjury?

3 MR. PHILLIPS: Perjury, Your Honor. Simple
4 perjury on that one. Whenever you're ready for the next
5 one, Your Honor.

6 THE COURT: Yes, go ahead.

7 MR. PHILLIPS: Thank you, Your Honor. The
8 next one is Count 5. That is she's pleading guilty to
9 stalking again as an (A) Misdemeanor. And that is going
10 to be 11 months, 29 days. Once again we're recommending
11 up front probation on that. I have spoken to the victim
12 in this case. She is on board with that as long as the
13 defendant gets the mental evaluation continuance that
14 we're going to be asking for as part of probation.
15 Again, consecutive to all other counts on this
16 indictment but concurrent to the -- and also indictment
17 ending in 884 but concurrent to the theft charge ending
18 in 903.

19 Your Honor, Counts 6, through 10, we're asking
20 to show nolle prossed at no cost all four of those
21 counts. And that is going to two counts of
22 impersonating a licensed professional. She would face
23 11 -- I'm sorry. She would face one to two years on
24 each of those (E) Felonies. We're asking to show both
25 of those nolle prossed at no cost.

1 And that would leave Count (indiscernible)
2 harassment. I'm asking to show that also nolle prossed
3 at no cost. She's facing 11 months and 29 days in jail
4 on that one as well. As well as the aggravated perjury
5 which in this variety it was to two TBI agents. So it
6 was actually an (E) Felony not the (D). So it's (E)
7 Felony. She faces one to two years as a Range I
8 Offender. Ask to show that nolle prossed, no cost.

9 THE COURT: What was that?

10 MR. PHILLIPS: Aggravated perjury.

11 THE COURT: The (E) Felony impersonating a
12 licensed professional?

13 MR. PHILLIPS: Yes, sir. That was the two
14 counts of impersonating a basically a lawyer. Those two
15 are both nolle prossed at no cost.

16 THE COURT: Okay. But presented as a felony?

17 MR. FELKNER: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. PHILLIPS: With respect -- and I believe
20 that covers that indictment. And I'll read the facts
21 here in just a few moments. With respect to the final
22 or one of the final indictments, it's a superseded
23 indictment, Indictment Number 15-00740. Represented by
24 Counsel, Ms. Holland, appointed on that one as well. It
25 was superseded by Indictment Number ending in 15-00884.

1 So with respect to the lone charge which I believe is
2 evading arrest under the indictment number ending in
3 740, ask you to show that nolle prossed at no cost.

4 The indictment number ending in -- or going
5 15-00884, that is an escape and evading arrest, she's
6 pleading guilty to Count 1 which is the escape. Under
7 that by statute must run consecutively. We wrote it as
8 one day. She has basically what equates to time served
9 on that. It must run consecutive to all other counts.
10 And that would be indictment numbers ending in -- or
11 14-06502 and 14-05903. Ask to show Count 2 which is the
12 evading arrest under that indictment nolle prossed at no
13 court cost. I believe that should cover the
14 indictments. If I may have just a moment to read the
15 factual basis.

16 Starting with the theft of property, the State
17 submits our proof would have been that on or about
18 December 23rd, 2013 the defendant entered into Khol's
19 retail store located at 3575 Houston Levee Road here in
20 Collierville, Shelby, Tennessee. There inside she was
21 on surveillance camera. Defense now has a copy of that
22 video. Where a Lost Prevention Officer, Trinty Bodkins,
23 (phonetically) actually was watching the defendant who
24 was pushing around her young son in a shopping cart at
25 Khol's.

1 The defendant then went several times for
2 about an hour, walked around, pretending to look up in
3 sort of a nervous manner to where it actually drew the
4 Lost Prevention Officer's attention. They noticed that
5 she in fact was going to the clearance section
6 repeatedly, walking through, tearing off tags from
7 clearance items, putting them in her jacket pocket. And
8 then she went back with name brand or new clothing not
9 on clearance, switched those tags when she was in the
10 changing room. She came out. They continued to monitor
11 on video. She went to pay for the items. However, she
12 paid for the clearance priced items that she had
13 actually stuck the tags on to the newer items. Thus
14 basically committing fraud against them. And it was a
15 total value of \$337.99 in merchandise. I don't know
16 what amount she was willing to pay but it was much less
17 than that. Those events all occurred in Shelby County,
18 Tennessee.

19 With respect to the evading arrest and escape,
20 I'll move to that one next. Indictment Number 15-00884,
21 after Ms. Moses had been held in direct criminal
22 contempt by Judge Gardner. On February 19th of 2014,
23 she was put in the back of a Shelby County squad car and
24 in the back of that squad car where she was handcuffed
25 she apparently told the officers that she was not

1 feeling well. Officers -- Deputy Snead and the other
2 deputy in the car cracked her window somewhat. She was
3 able to reach out with her hands and apparently open the
4 back of the squad car while it was moving going down I
5 believe it was either I-40 or I-240 near Summer Avenue.
6 They pulled over when they saw her trying to jump out of
7 a fast moving car on the interstate.

8 When they pulled over, she jumped completely
9 out. Deputy Snead who was the passenger of the car in
10 the front seat, jumped out, attempted to grab the
11 defendant. The defendant continued to flee across
12 approximately four lanes of heavy traffic thus actually
13 putting the officer in quite a bit of danger. The
14 officer continued to yell for the defendant, Ms. Moses,
15 to stop. Ms. Moses did not do so. In fact she never
16 stopped until she fell down a rocky embankment busting
17 her head open where she required medical attention.
18 The officer was injured in the apprehension as well
19 cutting up her knee. She had to go to the hospital as
20 well.

21 I mentioned prior that it may have been
22 assault, however, it was not. I'll make that clear.
23 There was not an assault on the officer. She was
24 injured by actually trying to apprehend the defendant.
25 I cleared that before the plea as well.

1 With respect to the large indictment and
2 that's Indictment 14-06502, Ms. Moses is pleading guilty
3 to the tampering with evidence. Should be with the
4 judgment sheets. That tampering basically deals with --
5 and I'm sorry. We didn't put in an offense date. Let
6 me make sure and put that on there. If I could have
7 just one second, Your Honor.

8 In this case it was on or about February 1st,
9 2014, the defendant in fact did tamper with or fabricate
10 evidence when she was sending off forms trying to get
11 Judge Gardner in trouble for the prior holding her in
12 contempt. She had a notary public form which she
13 actually fabricated. She actually made up and added the
14 seal. Made it look like it was official. It was not
15 notarized. That witness actually would have testified
16 at trial that that was not his stamp, that was not his
17 signature. That also makes it under the same Count 2,
18 forgery under a thousand. She forged this document as
19 well as used it, forged his signature, forged the notary
20 seal. This was also confirmed. I don't remember the
21 department but there was somebody in Nashville at the
22 capital that actually spoke to Special Agent Ryan
23 Fletcher with the FBI or the TBI. He's the one that
24 actually investigated these claims under this
25 indictment. He did confirm that that was in fact a

1 forged notary seal. And, again, that was in the
2 official investigation.

3 THE COURT: All right. On the tampering, what
4 was that tampering with --

5 MR. PHILLIPS: The tampering was where she
6 actually changed the form over to look like it was
7 official. She made that -- as far as when she sent it
8 in it was actually fabricating would be the tampering
9 with or fabricating of evidence. With respect to Count
10 3 --

11 THE COURT: What was the potential evidence?

12 MR. PHILLIPS: The tampering?

13 THE COURT: Yes.

14 MR. PHILLIPS: The tampering was where she
15 actually -- she basically used that document and I have
16 everything in the file.

17 THE COURT: Is that the official charge,
18 tampering with evidence?

19 MR. PHILLIPS: Yes, Your Honor.

20 THE COURT: How was it to be used as evidence?

21 MR. PHILLIPS: We were going to show that she
22 tampered with -- she actually made up the form and she
23 changed -- somehow used a notary public's form to --
24 once she was in the official investigation, she actually
25 used that and changed it over where --

1 THE COURT: There's going to be evidence in
2 what trial?

3 MR. PHILLIPS: I'm sorry. That would be in
4 the trial under Indictment Number -- that would -- I
5 believe they weren't asking for a severance though. It
6 would be indictment number ending in 502, Your Honor.

7 THE COURT: Okay. Go ahead.

8 MR. PHILLIPS: Under the perjury -- let me
9 make sure I get the correct one. She had two counts.
10 We're dismissing one of them. The perjury that was
11 Count 3 --

12 THE COURT: I may have stopped you. You were
13 going to tell me about the retaliation. Have you done
14 that?

15 MR. PHILLIPS: The retaliation we're actually
16 showing nolle prossed at no cost, Your Honor. I believe
17 -- I would submit we do have a factual basis on that but
18 as part of the negotiated plea we're asking to dismiss
19 that. And I have told the victim that as well. Make
20 sure I get the correct -- I apologize, Judge. I'm
21 trying to make sure -- I know the one aggravated perjury
22 was where she was under oath speaking to the TBI agent.
23 That's not the one we're pleading to though. I want to
24 make sure we have the proper one here for a factual
25 basis. If I can come back to that in just a moment,

1 Judge.

2 That leaves the stalking count which is she is
3 pleading guilty to stalking. The State's proof would
4 have been that on or about -- and I think we said, what,
5 it was July?

6 MS. HOLLAND: July 19th.

7 MR. PHILLIPS: July 19th, 2014, there was
8 actually a much longer period but, Judge, for a factual
9 basis this was after Judge Gardner, Judge Phyllis
10 Gardner of Shelby County General Sessions Civil judge
11 held this defendant in contempt after this defendant
12 tried to contact the judge repeatedly through electronic
13 media, posted several things very disparaging of her.
14 This defendant approached her during the election
15 season, approached her physically, ran up to her to
16 where others had to step in between and actually stop
17 the defendant from coming into contact with the victim.
18 She also attempted to contact the judge through other
19 agents around this time period and actually talked to
20 the judge, tried to hand the judge pro se things to
21 file. All of those events occurred in Memphis, Shelby
22 County, Tennessee. I believe everything else under that
23 indictment number is nolle prossed at no court cost,
24 Your Honor. That would be the factual basis.
25 Everything occurred in Memphis, Shelby County. Have I

1 listed everything?

2 THE COURT: You were going to go back on the
3 aggravated perjury and give me the set of facts.

4 MR. PHILLIPS: That's correct, Judge. I need
5 to make sure we do the proper one. If we need to change
6 it over, the intent was to have her plead to the perjury
7 where she was -- I was going to show the perjury where
8 she actually spoke to Special Agent Ryan Fletcher. She
9 was under oath. But we're showing that as simple
10 perjury. We can certainly do a factual basis on that,
11 but we need to make sure that we --

12 MS. HOLLAND: It's a document.

13 MR. PHILLIPS: I'm sorry?

14 MS. HOLLAND: It was a document that on the
15 face of it it had the oath, the sworn under perjury.

16 MR. PHILLIPS: Do you remember the date on
17 that? I apologize, Judge. I want to make sure we get
18 the right one. Counsel was just pointing out it was a
19 document that on its face it actually mentioned that it
20 was under oath even though it was -- I don't know if
21 it's the same one under the forgery, but there was a
22 document on its face that when done in the official
23 investigation of Judge Gardner judicial complaint by
24 this defendant which were done in retaliation to her
25 being held in contempt, she actually put on there that

1 she was under oath and several statements when Special
2 Agent Ryan Fletcher investigated the matter he found
3 those were absolutely false statements made on that
4 from. It looks like that was on or about February 1st,
5 2014, Judge.

6 I would ask counsel, first Mr. Ted Jones to
7 stipulate to a factual basis for this theft. And once
8 that's done, Judge, I would ask ...

9 MR. JONES: Your Honor, on behalf of the
10 defendant, we'd stipulate there's a factual basis to the
11 charges with respect to theft of merchandise. We'd ask
12 the Court to approve the negotiated plea and place her
13 on probation as set forth. She did want me to ask you,
14 every judge has a different comfort level with this, she
15 did want to have Your Honor consider due to her
16 indigency having the cost waived or partially waived.

17 MR. PHILLIPS: Judge, typically the State
18 doesn't agree to that. I'll submit whatever Your Honor
19 would like to do.

20 THE COURT: Well, my question is going to be
21 do you have an agreement or not? If you have a full
22 agreement and it's been negotiated, I'm not going to
23 further negotiate with regard to the payment of cost or
24 waiving those. I mean, certainly I understand she's in
25 custody and earlier it was stated she may have lost her

1 home. So I will be open to giving her reasonable time
2 to pay any fines and cost. And since that's brought up,
3 is there any restitution on the theft? That's the one
4 you're involved in?

5 MR. PHILLIPS: There is not. The tags were
6 damaged but the merchandise was all returned when they
7 caught her there before she left the last point of sale.

8 THE COURT: But you do stipulate there's a
9 factual basis for the plea?

10 MR. JONES: Absolutely, Your Honor.

11 THE COURT: And the matter has been fully
12 negotiated on the sentence? Everyone is in agreement?

13 MR. JONES: Absolutely, Your Honor.

14 THE COURT: Okay. All right.

15 MR. PHILLIPS: And, I'm sorry. I left out a
16 part. Before I ask for a factual basis from Ms. Holland
17 on her counts, I did ask the first two years of
18 probation is going to be a period -- a total period of
19 eight years. Everything ran consecutive except I
20 believe the -- it was one count that ran concurrent with
21 the theft. So it would be a total period of
22 approximately eight years on probation. The first two
23 years is very important. They're going to be intensive
24 to where she's going to have to do everything probation
25 asks her to do.

1 They typically meet with probationers once or
2 twice a week when they are on intensive. It's whatever
3 the officers ask of the defendant they must do. She
4 must also complete and continue mental evaluations and
5 all recommendations done. There was one time prior to
6 this she was released on a mental evaluation. She was
7 actually pending the escape charge downstairs. In fact
8 it was in Judge Joyce Broffitt's courtroom. And
9 according to the report, she didn't show back up. So if
10 she doesn't show up and do everything they ask, that
11 would be an absolute violation of her eight year's
12 probation. Also absolutely no contact with all victim's
13 and witnesses, specifically Judge Phyllis Gardner.
14 There is a couple of county attorneys, Virginia Bozeman
15 (phonetically) Marlin Iverson. And I've got their names
16 listed on the probation order. Also Special Agent Ryan
17 Fletcher. Unless he approaches her, we ask her not to
18 have any contact with him. She's also filed a lot of
19 civil lawsuits. These are not being touched in this,
20 but I ask that she not contact them directly. That if
21 she has counsel, counsel would do it. And if she
22 doesn't, not to contact them whatsoever. There is also
23 a continuance of probation order that the defendant
24 signed off on. I'd ask Your Honor to ask her about in a
25 few minutes.

1 I put additional conditions of probation are
2 that she have absolutely no positive drug screens or
3 criminal activities and absolutely no driving without a
4 valid license. That would include if she has her
5 license revoked, suspended or anything else. But that
6 would be the State's wishes for this.

7 And that was the agreement, Your Honor. And I
8 would ask Your Honor to accept the plea and counsel, Ms.
9 Holland, is there a factual basis for all of your pleas?

10 MS. HOLLAND: Your Honor, there's a factual
11 basis for the plea and agreement and we ask you to
12 accept the plea agreement as it is and grant Ms. Moses
13 probation.

14 THE COURT: All right. And she is pro se on
15 some of these civil things?

16 MR. PHILLIPS: I believe so, Judge.

17 THE COURT: All right. So she'll be required
18 to have some contact as far as copying adverse parties
19 and so you said absolutely no contact, but they'll -- it
20 would not need to be verbal, but she would need to copy
21 pleadings and those things. So is that contemplated?

22 MR. PHILLIPS: And we can do that right now,
23 Judge, if we need to write that. That's understood.
24 However, I don't want any contact in electronic media as
25 far as I don't want her putting post on people's

1 facebook. I don't want her emailing people unless it's
2 about a pending civil matter. She needs to be very well
3 aware of that.

4 THE COURT: Okay. Could I see counsel and
5 will you bring your (indiscernible) book or whatever
6 y'all call it in the middle of the table? Just one of
7 them. I need to look at the stalking statute. So
8 whoever is involved in the stalking, if you want to
9 approach. We'll be off the record for a minute.

10 (Court in recess.)

11 (Court in session.)

12 MR. PHILLIPS: Still pending -- as far as I
13 know still pending now mental evaluation. It's pretty
14 -- I've never done a plea with somebody having a
15 pending. I've also never requested an M.E. However,
16 again, as I said off the record earlier, Judge Beasley,
17 not that he's any kind of clinician or anything like
18 that. He found a year ago when the State asked for an
19 M.E. just before we had a jury trial, that this
20 defendant had filed many, many, many pro se motions.
21 She was pro se up until right before trial in that
22 matter. She filed a lot of motions that actually much
23 of them did make sense. And frankly he found that she
24 was very competent. That she could advise counsel in
25 all of those.

1 We do have notice from about this time last
2 year when she was sent to West Tennessee Forensic
3 Services, they came back and I don't know if she wasn't
4 working with them properly. I don't know what the
5 conditions were. But it says that they actually
6 recommended that she be transferred to mental -- Memphis
7 Mental Health Institute for further testing because
8 there were some questions to her competency. However, I
9 believe she certainly will tell Your Honor she is
10 competent. She has said that the entire time.

11 There is something in her history back around
12 1989 when she was in college at U.T. Knoxville. She had
13 some Bipolar Disorder and some other issues but nothing
14 to show that she wouldn't be competent. I believe I
15 asked for the mental evaluation just to be sure. But I
16 have no reason to believe that she's not competent other
17 than the charges basically. And certainly that in and
18 of themselves would not equate to somebody not being
19 able to I guess help counsel. But I just want to make
20 it clear on the record there is still a pending mental
21 evaluation so Your Honor may want to ask her just a few
22 questions about that.

23 For the record, I believe she has family
24 members here as well. Some of which obviously her
25 parents are both here. They would know information

1 about that. But I believe all parties are all in
2 agreement, we not being professionals but believing she
3 is competent. Otherwise we wouldn't enter this plea;
4 correct?

5 MS. HOLLAND: Correct.

6 MR. JONES: Correct.

7 MR. PHILLIPS: Okay.

8 THE COURT: All right. Anything else before I
9 question Ms. Moses?

10 MR. PHILLIPS: I don't believe so.

11 THE COURT: All right. I need to question
12 her. Will she do that from the witness stand?

13 MR. PHILLIPS: Yes, Your Honor.

14

15 **THEREUPON:**

16

PAMELA MOSES

17 was called, and upon first being duly sworn,

18 was examined and testified as follows on:

19

VOIR DIRE

20

BY THE COURT:

21 Q. All right. Will you state your full name for
22 the record?

23

A. Pamela Moses.

24

25

Q. All right. Ms. Moses, we've got a lot of
paperwork to go through. And I'm required to go through

1 and make certain you understand the charges brought
2 against you. That you are going forward knowingly,
3 voluntarily, intelligently. That you understand this
4 whole process and you're going to need to answer out
5 loud so that I can hear you and so that it can be
6 recorded. Do you understand that?

7 A. Yes, sir.

8 Q. Okay. So we're going to take our time and go
9 through. If I ask you anything that you don't
10 understand, you need to stop and let me know.

11 A. Yes, sir.

12 Q. Okay. You understand that you have several
13 charges. Let me go through those with you. You are
14 charged with tampering with evidence, and that carries a
15 potential sentence of three to six years to serve at a
16 rate of 30 percent as a Range I Standard Offender. And
17 it carries a potential fine of up to \$10,000. Do you
18 understand that?

19 A. Yes, sir.

20 Q. Okay. You're charged with forgery. It
21 carries a potential sentence one to two years. Served
22 at a rate of 30 percent with a potential fine up to
23 \$3,000. Do you understand that, ma'am?

24 A. Yes, sir.

25 Q. You're charged with retaliation for a past

1 action. That also is a felony that carries potential
2 time from one to two years. Again, to serve at 30
3 percent before eligible for release status. Also
4 carries a potential fine up to \$3,000. Do you need me
5 to stop?

6 A. No.

7 Q. This is your day in court, and it's an
8 important day for you. You know, I want to be patient
9 and I want to make sure you understand everything going
10 on, but you need to be interested in what we're doing.

11 A. Yes, sir.

12 Q. Okay. Do you want to go forward and do this
13 today?

14 A. Yes, sir.

15 Q. Okay. I was telling you about the aggravated
16 perjury. And it carries a potential sentence one to two
17 years to serve at 30 percent with a potential fine up to
18 \$3,000. Do you understand that, ma'am?

19 A. Yes, sir.

20 Q. Okay. You're charged with two counts of
21 harassment. Each of which carry potential jail time up
22 to 11 months, and 29 days. Also carries a potential
23 fine of \$2500. Do you understand that, ma'am?

24 A. Yes, sir.

25 Q. You're charged with two counts of

1 impersonating a licensed professional. That carries a
2 potential sentence of one to two years. Again, to serve
3 at a rate of 30 percent. Again, carrying a potential
4 fine of up to \$3,000. You understand that, ma'am?

5 A. Yes, sir.

6 Q. You're charged with theft under \$500. That
7 carries a potential of jail sentence up to 11 months and
8 29 days in the county jail. Also carries up to a
9 \$2500 fine. In fact, the remaining charges being
10 evading arrest, escape, stalking, and perjury, are all
11 Class A Misdemeanors. All carry that potential sentence
12 up to 11 months and 29 days in the county jail. All
13 carrying a potential fine up to \$2500. Do you
14 understand that, ma'am?

15 A. Yes, sir.

16 Q. On the escape charge you understand that while
17 all of that is required to be served consecutive to your
18 other sentence?

19 A. Yes, sir.

20 Q. You understand on the stalking charge if
21 you're found to be guilty of stalking, it may be used
22 against you later to enhance or increase the penalty.
23 For example, if you're found to be found guilty of this
24 stalking and then later charged and found guilty of
25 stalking, you would be presented as a felony charge

1 against you. So by being found guilty of the charge
2 today, it may be used against you later? Do you
3 understand that, ma'am?

4 A. Yes, sir.

5 Q. Do you understand the penalties associated
6 with all of these charges?

7 A. Yes, sir.

8 THE COURT: Have I now stated all the charges
9 to her, Lawyers?

10 MS. HOLLAND: Yes, Your Honor.

11 THE COURT: You think so. All right. I'm
12 going to go through now and let me make certain I
13 understand what you're pleading guilty to. I understand
14 you're pleading guilty to some charges and the State is
15 dismissing some charges. It's my understanding you're
16 plead guilty to the theft of merchandise under \$500?

17 A. Yes, sir.

18 Q. That you're pleading guilty to tampering with
19 evidence, to forgery under \$1,000, to perjury and to
20 stalking?

21 A. Can I ask you a question?

22 Q. Yes, ma'am?

23 A. When you stopped them and you asked them about
24 the tampering with evidence, why did you ask them that?

25 Q. Why? I wanted to know what the evidence -- I

1 understood the tampering he talked about the change and
2 the document. I was understanding -- asking what
3 evidence, what that document was going to be used as
4 evidence in. That's why.

5 A. Like in ...

6 Q. Ma'am?

7 A. I just -- I just was wanting to know why you
8 had asked them that cause I had asked my lawyer several
9 times what was the case that I tampered. You know, you
10 hear it all the time, but that's all. I just was
11 wanting to know. You had the same question I had.

12 Q. Well, before I can accept any guilty plea, I
13 have to be convinced that there are sufficient facts for
14 you to plead guilty and then for me to accept it.

15 A. All right.

16 Q. So as he was telling me what he believed he
17 could show, I needed to listen and to make certain that
18 I believe that a crime was being committed.

19 A. Okay.

20 Q. So I had a question, so I stopped and asked.

21 A. All right.

22 Q. But as we go through this, if you have a
23 question you need to stop and ask me because you need to
24 understand what we're doing as well as I do. So this is
25 your day in court. And we'll stay here as long as it

1 takes to make certain you understand everything. All
2 right. I've gone through and told you I believe you're
3 pleading guilty to the theft, the tampering with
4 evidence, forgery under a thousand, perjury, stalking,
5 and then a charge of escape.

6 A. Yes.

7 Q. Is that correct?

8 A. Yes.

9 THE COURT: Is that correct, lawyers? That's
10 all the charges she's pleading guilty to?

11 Q. All right. In addition to pleading guilty,
12 ma'am, it's my understanding that you also waive your
13 right to a trial by jury and that you waive any appeal;
14 is that correct?

15 A. Yes, sir.

16 Q. All right. You understand those are very
17 valuable Constitutional Rights that you give up?

18 A. Yes, sir.

19 Q. Do you understand that if you chose to go to
20 trial on any of these counts and if you're found to be
21 not guilty on those charges, you're free of the charge.

22 A. Yes, sir.

23 Q. Do you understand that if you choose to go to
24 trial and if you're found to be guilty, you then have
25 the right to file an appeal?

1 A. Yes, sir.

2 Q. Do you understand that if you choose to go to
3 trial you have the right to call and confront any
4 witnesses. Any witness that may be brought against you,
5 you may question them and challenge them and confront
6 them. And any witness that you wished to call, then you
7 have a right to call your witnesses?

8 A. Yes, sir.

9 Q. Do you understand also you have a right to not
10 incriminate yourself. No one could force you to testify
11 at trial. If you wanted that opportunity, then you have
12 that right?

13 A. Yes, sir.

14 Q. So you understand you're giving up very
15 valuable Constitutional Rights?

16 A. Yes, sir.

17 Q. All right. One of your rights is you have the
18 right to have a lawyer represent you. Mr. Jones is
19 representing you on the theft charge; is that correct?

20 A. Yes, sir.

21 Q. And Ms. Holland is representing you on the
22 other charges; is that correct?

23 A. Yes, sir.

24 Q. All right. Are you satisfied with the legal
25 representation that you've been provided?

1 A. Yes, sir.

2 Q. Do you have any complaints about your lawyers
3 that you need to make me aware of?

4 A. No, sir.

5 Q. All right. The prosecutor a few moments ago
6 stood and went through each count and told the Court
7 what he believed could be established against you by the
8 State. Did you hear him as he went through that, ma'am?

9 A. Yes.

10 Q. Do you substantially agree that those are the
11 facts that would be presented by the State?

12 A. Yes, sir.

13 Q. Is anyone forcing you to plead guilty?

14 A. No, sir.

15 Q. Has anyone promised you anything if you plead
16 guilty?

17 A. No, only just said to probation and --

18 Q. Other than the plea agreement which has been
19 announced, has anyone promised you anything?

20 A. No, sir.

21 Q. All right. There's been some conversation
22 about any mental health issues. Have you understood all
23 the questions I've asked today?

24 A. Yes, sir.

25 Q. All right. Are you suffering from any mental

1 health issues that you're aware of?

2 A. No, sir.

3 Q. Is there anything that would keep you from
4 understanding what you're doing today?

5 A. No, sir.

6 THE COURT: All right. General, you'd asked
7 me something about mental health issues. Have I
8 addressed those or are there other things that need to
9 be addressed?

10 MR. PHILLIPS: I believe so, Your Honor. I
11 don't know if she's currently on any medication. Like I
12 said, in the past there was some mention about Bipolar
13 Disorder. I don't know if she's currently on any
14 medication for that or if she's not.

15 BY THE COURT:

16 Q. All right. Ma'am, are you on any medications
17 that would keep you from understanding what you're doing
18 today?

19 A. No, sir.

20 Q. All right. Do you understand, Ms. Moses, that
21 by entering this plea and the Court accepting it, there
22 will be no further trial and this will resolve the
23 issues before the Court and that you have pending
24 against you?

25 A. Yes, sir.

1 THE COURT: Okay. I know there was some
2 statement and I don't know if it's been made on the
3 record, but I think the last time I was here and maybe
4 even mentioned today about potentially some other
5 charges being brought to the grand jury. Are those
6 being resolved by this issue today?

7 MR. PHILLIPS: That is correct, Your Honor. I
8 think we were off the record earlier. Anything that may
9 have been submitted to the grand jury that I discussed
10 about potential, I know she doesn't agree to the factual
11 basis but potential aggravated perjury, I will not be
12 submitting those two counts to the grand jury as a
13 condition of this plea. As part of this negotiated plea
14 we will not be submitting those for indictment.

15 BY THE COURT:

16 Q. All right. So that's now been made a part of
17 the record as well. Do you understand that?

18 A. Yes, sir.

19 Q. All right. So basically if you enter this
20 plea and then the Court accepts it, this will be your
21 day in court. It resolves the issues before the Court
22 now as we well as those two issues that the prosecutor
23 just stated.

24 A. Yes, sir.

25 Q. Do you understand that by being found guilty,

1 these matters may be used against you later to enhance
2 or increase the sentence if you continue to violate the
3 law?

4 A. Yes, sir.

5 Q. Do you understand that these matters are being
6 resolved because your lawyers on your behalf have
7 negotiated with the prosecutor on behalf of the State in
8 order to reach these agreements?

9 A. Yes, sir.

10 Q. Did you fully understand what you're doing,
11 Ms. Moses?

12 A. Yes, sir.

13 Q. All right. In a few moments I'm going to ask
14 you how you plead. Before I do that, do you need to
15 speak to your lawyers for any reason?

16 A. No, sir.

17 Q. Do you have any questions, ma'am, that you
18 want to ask me?

19 A. Are you any relation to Lenisha
20 (phonetically).

21 Q. To who?

22 A. Lenisha.

23 Q. Lenisha?

24 A. McCraw?

25 Q. I have an aunt named Lenita McCraw.

1 A. You do?

2 Q. Is that a problem?

3 A. No. I just was wondering if you was any
4 relation to her.

5 Q. Does that create any problem why we shouldn't
6 go forward on this plea?

7 A. No.

8 Q. Does that create a conflict in any way?

9 A. I don't think so, do you? I don't think so.

10 Q. I don't know how you know her or why you know
11 her or --

12 A. It don't create a conflict with me.

13 Q. Okay. How do you know her?

14 A. I just -- somebody I had met a long time ago
15 in Oakland. I just was -- the name McCraw is so common
16 so ...

17 Q. But she used to be the election commissioner?

18 A. I was on the -- I was a poll watcher so ...

19 Q. Okay. Does that create any concern for you
20 going forward that she is my aunt?

21 A. Naw. I just when you asked me did I have any
22 questions --

23 Q. I want to get everything clear so that if you
24 ever have an issue and this lady is recording what we're
25 doing. And that's why if you have a question for me,

1 I'm going to answer it because I want you to know I'm
2 being fair with you.

3 A. No, she's a nice lady. It wasn't no problems.
4 I just was, you know, how you hear names and stuff and
5 you be like I wonder is he any relation. I've been
6 wanting to ask you but you told me to be quiet. So ...

7 Q. Well, no, that's fine. We can have a
8 conversation with each other. I just want to make
9 certain you fully understand what you're doing and I'm
10 not trying to --

11 A. I'm just ready to go home so, you know.

12 Q. Any other questions you want to ask me?

13 A. No, sir.

14 Q. Want to know about any of my other kin folks
15 or anything?

16 A. No. How do you like Memphis.

17 Q. I want to go home, too.

18 A. Me too. Me too. Me too.

19 Q. Are you ready to enter your pleas?

20 A. Yes, sir.

21 Q. Okay. Let me go through. On the charge,
22 ma'am, of theft of merchandise under \$500, do you plead
23 guilty or not guilty?

24 A. Guilty.

25 Q. All right. Ma'am, on the charges of tampering

1 with evidence, forgery under \$1,000, perjury and
2 stalking, do you plead guilty or not guilty?

3 A. Guilty. I -- just one question for my
4 attorney.

5 Q. Which one? Do you want both of them or one?

6 A. Josie.

7 Q. Why don't you sit there and let them come up
8 here. Why don't you sit back down.

9 THE COURT: Counsel, will you approach,
10 please?

11 MS. HOLLAND: Yes, Your Honor.

12 (Pause in the proceedings.)

13 THE COURT: Are we ready to go forward,
14 Counsel?

15 MS. HOLLAND: Yes, Your Honor.

16 THE COURT: Are you ready to go forward, Ms.
17 Moses?

18 THE WITNESS: Yes, sir.

19 **BY THE COURT:**

20 Q. All right. Let me go through again and,
21 again, I'm not certain if I got a full answer and if I
22 did, I'm sorry. I just want to make sure we get it
23 cleared up. On the charge of tampering with evidence,
24 forgery under one thousand, perjury and stalking, how do
25 you plead to it, ma'am, guilty or not guilty?

1 A. Guilty.

2 Q. And lastly, ma'am, on the charge -- the other
3 indictment number to escape, do you plead guilty or not
4 guilty?

5 A. Guilty.

6 Q. All right. Do you have any questions now?

7 A. No, sir.

8 Q. Do you fully understand what you're doing?

9 A. Yes, sir.

10 THE COURT: The Court finds Ms. Moses is
11 competent to enter into these pleas. The Court finds
12 that she understands both the direct and indirect
13 consequences of entering such pleas. The Court further
14 finds Ms. Moses has entered into these freely,
15 voluntarily and intelligently with the appropriate set
16 of facts present for each of the pleas. Therefore, the
17 Court does accept her pleas of guilty on those charges
18 and so finds her guilty. By further agreement, the
19 charges to which a plea of guilty has not been entered
20 have been nolle prossed by the State. Is that correct?

21 MR. PHILLIPS: That's correct, Your Honor.

22 THE COURT: All right. With regard to
23 sentencing, all parties are waiving the Presentence
24 Report; is that correct?

25 MR. PHILLIPS: That's correct, Your Honor.

1 MS. HOLLAND: Yes, Your Honor.

2 MR. PHILLIPS: And for the record we had a
3 Presentence Report for her bond hearing approximately
4 three months ago. So the State's well aware of her
5 record.

6 THE COURT: All right. Before the sentence is
7 imposed, is there anything else to be added to the
8 record by anyone?

9 MR. PHILLIPS: Judge, only that normally
10 there's a court probation supervisor that sits in here
11 during the normal office hours. Because we came in late
12 on a special docket, they are not here. But the
13 defendant I guess she can talk to her attorneys. I want
14 to make sure she contacts her probation officer within a
15 day or so when she gets released. She'll contact the
16 office and they'll assign her an intensive officer
17 because I don't want them to violate her because she
18 hasn't checked in. I want to make sure she knows to
19 check in.

20 THE COURT: Let me go through and make certain
21 I understand the sentence as well as more importantly
22 Ms. Moses, and then we'll make certain she knows to
23 report. All right. On the tampering with evidence, my
24 understanding the agreed upon sentence is three years at
25 a rate of 30 percent.

1 On the forgery under \$1,000 the agreement is
2 two years at 30 percent. On the perjury and the
3 stalking that will be 11 months and 29 days at a rate of
4 75 percent.

5 MR. PHILLIPS: Judge, the way they do that in
6 Shelby County because of jail overcrowding, I've been
7 told they get as much as two for one credit, but I don't
8 -- normally I'm careful advising people on that because
9 I don't know exactly what credit they would get if she
10 were violated on her -- if her suspended sentence was
11 revoked, I think she could do up to the full 11, 29, but
12 typically they get some type of two for one credit on
13 those.

14 THE COURT: All right. So the sentence would
15 be 11 months and 29 days in the county jail?

16 MR. PHILLIPS: Yes, Your Honor.

17 THE COURT: Other docket numbers -- on the
18 additional escape charge, that sentence is 11 months and
19 29 days and that is consecutive to the other charges.
20 The tampering with evidence, forgery, perjury, and
21 stalking, they are all concurrent with each other; is
22 that correct?

23 MR. PHILLIPS: No, Your Honor. Those are
24 actually consecutive to one another. Because it would
25 be the three years consecutive to the -- and that was on

1 the tampering consecutive to two years on the forgery
2 and consecutive to each of the misdemeanors, 11, 29. I
3 think the only thing that ran concurrent was -- correct
4 me if I'm wrong -- was the theft. Is that how we -- I
5 know we ran it where it was a total sentence of eight
6 years, total period of probation of eight years.

7 THE COURT: All right. So the tampering with
8 evidence, the forgery, the perjury and the stalking,
9 each of those sentence are consecutive --

10 MR. PHILLIPS: That's correct.

11 THE COURT: -- to each other? Yet will be
12 concurrent to the theft under 500. The bottom line this
13 is going to be an effective eight year sentence. And
14 the theft under \$500, that sentence was 11 months and 29
15 days. All right.

16 BY THE COURT:

17 Q. All right. You understand the penalties
18 associated and the sentences associated with each of
19 those convictions?

20 A. Yes, sir.

21 Q. Is that what you've agreed to, ma'am?

22 A. Yes, sir.

23 Q. Okay. All right. With regard to probation
24 issues, the sentences are going to be suspended except
25 for time served; is that correct?

1 MR. PHILLIPS: That's correct.

2 THE COURT: And she has credit for how many
3 days?

4 MR. PHILLIPS: I think on the one just to be
5 safe even though I think she had a little more credit,
6 we wrote the escape as one day with one day time served
7 just to make sure there wouldn't be any jail credit
8 problems.

9 THE COURT: All right. So all the appropriate
10 jail credit is going to be on the Judgment Sheets.

11 MR. PHILLIPS: I believe when I talked to
12 Madam Clerk, I believe those are actually filled out
13 downstairs, is that correct, by somebody who specializes
14 in making sure they get all the proper credit from their
15 time. But the eight years probation will be set to
16 start began today. So she would not have -- I guess if
17 she were ever violated she would have whatever back
18 credit, but that would be kind of on the back end.

19 THE COURT: She's also required to pay the
20 court cost. She'll make those in monthly installments
21 of \$50 per month beginning June the 1st.

22 A. Can that not be a little less?

23 Q. Ma'am?

24 A. Can what be a little less?

25 Q. A little less than \$50?

1 A. Yeah, because I don't have no money. And I
2 wouldn't want to be in jail for court cost.

3 MR. PHILLIPS: Judge, just to -- she would
4 never be in jail for court cost. But just -- not in
5 this county -- but just to make sure we're clear, I will
6 go ahead and the State would agree -- we didn't agree
7 earlier, but I'll agree to waive whatever court cost.
8 When she's out of custody I hope she'll be a
9 contributing member of society. I don't want her to
10 spend it all on court cost. So I guess the State is
11 requesting along with Defense that those court costs be
12 waived.

13 THE COURT: All right. So that will require a
14 change on the Judgment Sheet, which is fine. I mean, we
15 can do it.

16 MR. PHILLIPS: Is there a special sheet for
17 that?

18 THE CLERK: (Indiscernible).

19 THE COURT: All right. So the order allowing
20 installment payments of fines and cost are no longer
21 needed because fines and cost -- they were no fines and
22 cost are being waived.

23 THE WITNESS: Thank you. Thank you.

24 THE CLERK: Your Honor, there are some costs
25 that they cannot waive, like maybe (indiscernible) fees.

1 (Indiscernible). Certain costs cannot be waived.

2 MR. PHILLIPS: Okay. So we'd still need the
3 cost sheet showing by defendant but then we'll say on
4 the other form, everything waived that can be.

5 THE CLERK: Right.

6 MR. PHILLIPS: Okay.

7 THE CLERK: You can minimize the amount on the
8 cost sheet to \$10 or \$5 just in case so that the order
9 that I'm about to (indiscernible).

10 MR. PHILLIPS: Sorry, Judge. I did not mean
11 to complicate matters.

12 BY THE COURT:

13 Q. All right. So the agreed monthly payment, how
14 much can you pay per month?

15 A. \$5.

16 Q. How about 10?

17 A. I guess I can do 10.

18 Q. Okay. All right. The costs are going to be
19 reduced and minimized. Apparently there are some that
20 are mandatory that the State nor the Court is able to
21 waive. But I mean you're obviously a bright lady. You
22 have the ability to earn some income and pay \$10 a month
23 and it won't start until June.

24 A. Not with two felonies.

25 Q. Well, you had a felony before and you were

1 able to work?

2 A. Naw, I didn't. I was a musician.

3 Q. You didn't have a felony out of Knox County?

4 A. No, I said I didn't work. I hadn't worked in
5 about probably nine years.

6 Q. Why is that?

7 A. Because I can't find a job because of the
8 felony. But I'm working on a real good book and I hope
9 it will be a best seller.

10 Q. All right. As further parts of the probation
11 the first two years of probation will be intensive
12 probation. She must complete and continue mental
13 evaluation, follow the recommendations. All right. You
14 understand, ma'am, there's absolutely no contact with
15 any of these victims and witnesses particularly Judge
16 Gardner, Ms. Bozeman, Ms. Iverson, and Mr. Fletcher?

17 A. Yeah, I mean, I understand.

18 Q. So that means certainly not by phone, not in
19 person, not by social media.

20 A. I never contacted them by phone. They were
21 lawyers for Judge Gardner and all the communications
22 were in regards to the lawsuit.

23 Q. I'm just telling you that --

24 A. I don't have any reason. I think John Jones
25 is the new lawyer and John Writer so I don't have any

1 reason to contact them. And I would also request that
2 you ask Ryan Fletcher not to contact me.

3 Q. I don't know who Ryan Fletcher is?

4 A. He's the TBI agent that I contacted and then
5 that started all of this.

6 Q. Well, he's not before the Court. So the
7 Court's not going to order him to stay away from you.
8 Although unless you're being investigated for some type
9 of crime I don't know why he would need to have contact
10 with you. But, again, he's not before the Court so the
11 Court has no authority over him.

12 A. Okay.

13 Q. I've got before me a probation order, ma'am,
14 that has your name and it appears that you -- is this
15 your signature on here, ma'am?

16 A. Yes.

17 Q. Okay. Has somebody gone through all of these
18 rules of probation with you?

19 A. Yes, sir.

20 Q. Yes?

21 A. Uh-huh.

22 Q. Do you understand those?

23 A. Yes, sir.

24 Q. Okay. All right. You do understand, ma'am,
25 that the failure of you to abide by the rules of

1 probation will result in a violation being filed against
2 you and you being brought before the Court with a risk
3 of incarceration?

4 A. Yes, sir.

5 Q. All right. State probation will be the
6 supervising agency for all of these including the
7 misdemeanors and everything. All right. You understand
8 also as a condition to your probation absolutely no
9 positive drug screens, no criminal activities. Also no
10 driving without a valid driver's license. Do you
11 understand that is expressly stated out in the agreement
12 that you've made with the State?

13 A. Yes, sir.

14 THE COURT: All right. My understanding is
15 she will be released today; is that correct?

16 MR. PHILLIPS: Judge, I don't know how long it
17 will take Jail East to process her but that's the State
18 and the Defense's intent.

19 THE COURT: All right. Whatever
20 documentation, when it's all done, she's going to be
21 released; correct?

22 MR. PHILLIPS: That's correct.

23 THE COURT: And all the documentation I've
24 been provided once I sign it, once it's been processed,
25 will allow her then to be released. However long that

1 takes.

2 THE WITNESS: Could I get a copy of it?

3 THE COURT: Yes, ma'am. Could she get a copy
4 of her paperwork? Yes, ma'am. Did any of the judgment
5 sheets reflect credit for time served? How do y'all do
6 that here?

7 MS. HOLLAND: Your Honor, by Defense's
8 calculations she has 132 days time served.

9 THE COURT: Does that need to be reflected on
10 the Judgment Sheet or how do y'all do that in Shelby
11 County?

12 MR. PHILLIPS: Madam Clerk, is that typically
13 how it's done? He's asking me about the jail credit,
14 he's asking if she had 132 days jail credit, should we
15 but put that on I guess the Judgment Sheet.

16 THE CLERK: No, you don't need to do anything
17 because she's getting released straight probation. So
18 they're not going to even calculate her jail credit.
19 The probation order is going to get her out.

20 MR. PHILLIPS: Okay.

21 THE CLERK: Only if there's a violation is the
22 jail credit (indiscernible).

23 MR. PHILLIPS: Okay. That's what I was
24 thinking, Your Honor. That on the back end they would
25 calculate that if she ever violated. It would be on the

1 jacket and everything.

2 **BY THE COURT:**

3 Q. All right. And I understand no one from
4 probation is here. So it will be your responsibility,
5 ma'am, to contact someone from probation so that you can
6 meet with them and go over these rules and be certain on
7 what you're required to do. Do you understand that?

8 A. Yes, sir.

9 Q. Lawyers can assist in that. Okay. You
10 understand your failure to do that would cause them to
11 quickly file a violation against you?

12 A. Yes, sir.

13 Q. Again, they're going to set up responsible
14 rules for you. You know, if you follow those, then you
15 won't be back in court and life will be much better for
16 you. If you don't follow them, you're going to be back
17 in court I'm afraid.

18 A. I did it for 17 years.

19 Q. Okay. Well, do another 17 and you'll be on
20 your way.

21 THE COURT: Anything else that I need to put
22 in the record? Anything that I failed to do? Any
23 custom I have not followed which is important to what
24 y'all do here?

25 MS. HOLLAND: No, Your Honor.

1 MR. PHILLIPS: No. I think that's it.

2 BY THE COURT:

3 Q. All right. Ma'am, do you have any questions
4 whatsoever?

5 A. No, sir.

6 Q. Do you understand what you're doing?

7 A. Yes, sir.

8 Q. Have I stated anything that you haven't agreed
9 to?

10 A. No, sir.

11 Q. Okay. All right. Thank you, ma'am. You may
12 step down.

13 (Witness excused.)

14 THE COURT: Is there anything I haven't done
15 that you think I need to do?

16 THE CLERK: (Indiscernible).

17 THE COURT: That's a good idea. Do you want
18 your sheet back? Someone's book. I don't know. Does
19 it stay in here?

20 MR. PHILLIPS: I think so, Judge.

21 THE CLERK: Judge, I think everything seems to
22 be okay except for the attorneys did not put the
23 indictment numbers on her probation order. So she would
24 not be able to get released.

25 THE COURT: Okay. Can we get indictment

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

numbers, please? Anyone else have any business before
me? If not, I will be on my way. All right. Thank
y'all very much. We'll stand adjourned.

END OF PROCEEDINGS HEARD IN THIS CAUSE ON
APRIL 29TH, 2015.

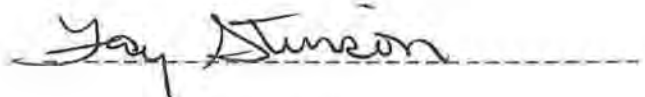
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, the undersigned, Fay Stinson, Official Court Reporter for the Thirtieth Judicial District fo the State of Tennessee, do hereby certify the foregoing to be a true, accurate, and complete transcript, to the best of my knowledge and ability, of all the proceedings had in the hearing of the captioned cause, in the Criminal Court for Shelby County, Tennessee, on the 29th day of April, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Dated this 29th day of October, 2015.



Fay Stinson
Official Court Reporter
State of Tennessee

These proceedings were reported by Bettye Kee, Court Reporter, but were transcribed by Fay Stinson, Official Court Reporter.

