



S.C.A.L.E.S.

The Supreme Court Advancing Legal Education For Students

May 22, 2019
Boys State
Tennessee Tech University





The scales have long been used to symbolize this careful balance of elements in the justice system and legal proceedings. There is a balance sought between the two parties to any case; between the rights of one accused and those of the state to pursue justice on behalf of its citizens.

There are two sides to every story. As you listen to the arguments today, think how you would balance what each party is sharing with the court.

COURT PROTOCOL

DO

- Dress appropriately.
- Remove hats before entering the courtroom.
- Enter the courtroom prior to the commencement of an argument.
- Stand when the justices enter and leave the courtroom.
- Listen attentively to courtroom proceedings.
- Address a member of the Supreme Court as “Justice” or “Chief Justice,” followed by the last name. All judges may be called “Your Honor.”

DO NOT

- Bring weapons of any kind to SCALES. This includes pocketknives.
- Bring food, drinks, cameras, recorders or cell phones into the courtroom.
- Bring book bags, backpacks, or large purses into the courtroom.
- Enter or leave the courtroom during an argument.
- Chew gum or create any distraction in the courtroom.
- Engage in any conversation once an argument begins.
- Discuss the cases with members of the Supreme Court.



TENNESSEE SUPREME COURT

CHIEF JUSTICE
JEFFREY S. BIVINS

JUSTICES
CORNELIA A. CLARK
SHARON G. LEE
HOLLY KIRBY
ROGER A. PAGE

April 25, 2019

Dear Boys State Delegates,

Welcome to this special session of the Tennessee Supreme Court. Our Supreme Court usually meets in courtrooms in Knoxville, Nashville, and Jackson, but we are holding court at Boys State to give you a first-hand look at how the judicial system works. We hope that this opportunity will provide you with a unique civics lesson.

The Supreme Court is the highest court in the State of Tennessee. The five Justices who serve on the Supreme Court are committed to applying and interpreting the law in a fair and impartial manner. As Justices, we are always mindful of our responsibilities and the importance of fostering public confidence in the operation of our courts.

The judicial branch of government serves a critical function in our governmental system in criminal matters by fairly balancing the rights of the victims with the rights of the accused. The judicial branch also interprets and applies the U.S. Constitution and the Tennessee Constitution, construes the laws passed by our Legislature, and resolves disputes between parties. We strive to instill confidence in all citizens of our State in the law's ability to protect individual rights, settle disputes, and bring us together as a society. By holding sessions such as this outside normal courthouse settings, we hope to be more transparent to all citizens of our State and to improve your confidence in our judicial system.

Thank you for your participation in Boys State and this special session of the Tennessee Supreme Court. We hope that you will find this experience enjoyable, as well as a useful learning tool. We look forward to seeing you on May 22, 2019.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey S. Bivins". The signature is written in a cursive style with a large, prominent "J" and "B".

Jeffrey S. Bivins
Chief Justice

SCHEDULE

- 8:05 a.m. Jacksonians enter the courtroom
- 8:30 a.m. *State of Tennessee v. Ernesto Delgadilo Rodriguez*, E2017-00369-SC-R11-CD
- 9:30 a.m. Jacksonian students will move to the Wattenbarger Auditorium in the Bryan Fine Arts Building to be debriefed.
- 9:35 a.m. Johnsonians will enter the courtroom.
- 10 a.m. *State of Tennessee v. Denton Jones*, E2017-00535-SC-R11-CD
- 11 a.m. Johnsonian students will stay in the auditorium to be debriefed.



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TENNESSEE JUDICIAL SYSTEM

The **judicial branch**, one of the three basic divisions of state government, serves as a check on the powers of both the legislative and executive branches. Through the power of judicial review, the courts rule on the constitutionality of legislation passed by the Tennessee General Assembly and considers the legality of administrative policies and regulations.



The executive branch is led by the governor. In Tennessee, the governor's office is actually located in the statehouse and not the governor's mansion, shown above.



The Tennessee Statehouse, located in Nashville, is home to the legislature.



The Tennessee Supreme Court has buildings in Nashville (shown above), Knoxville, and Jackson.

Tennessee's judicial system is derived from a **constitutional foundation**: "The judicial power of this state shall be vested in one Supreme Court and in such Circuit, Chancery, and other inferior courts as the legislature shall from time to time ordain and establish" (Article VI, Section 1, Constitution of the State of Tennessee).

Although not a part of the court system, the offices of the attorney general, district attorneys general and district public defenders are associated with the judicial branch of state government.

The **attorney general** represents the interests of the state in civil litigation and in criminal cases in the appellate courts. The 31 **district attorneys** serve as prosecuting counsel in criminal cases in the trial courts.

Public defenders and court-appointed private attorneys represent indigent defendants, primarily in criminal cases.

The **Supreme Court** is the highest court in the state. The five justices are nominated by the Governor's Council for Judicial Appointments, appointed by the governor, confirmed by the General Assembly and subject to a retain/replace vote for eight-year terms. The majority of this court's workload consists of criminal and civil cases appealed from lower state courts.

The **intermediate appellate courts** -- the Court of Appeals and Court of Criminal Appeals -- hear civil and criminal cases appealed from the trial courts.

The state's **trial courts** include Chancery, Criminal, Circuit and Probate Courts. Judges in these courts are chosen by popular election within their judicial districts.

The fourth level of courts in Tennessee is composed of the **courts of limited jurisdiction** -- General Sessions, Juvenile and Municipal Courts. Their respective counties or municipalities fund these courts.



There are 31 judicial districts in Tennessee, some of which serve a single county and others that stretch from Kentucky to Alabama.

State Trial Courts

Tennessee's 95 counties are divided into 31 judicial districts. Within each district are Circuit Courts and Chancery Courts, as provided by the state constitution. Some districts also have legislatively established Criminal Courts and Probate Courts. Judges of these courts are elected to 8-year terms.

CIRCUIT COURTS are courts of general jurisdiction in Tennessee. Circuit Court judges hear civil and criminal cases and appeals of decisions from Juvenile, Municipal and General Sessions Courts. The jurisdiction of Circuit Courts often overlaps that of the Chancery Courts. Criminal cases are tried in Circuit Court except in districts with separate Criminal Courts established by the General Assembly.

CRIMINAL COURTS are established by the legislature to relieve Circuit Courts in areas with heavy caseloads. In addition to having

jurisdiction over criminal cases, Criminal Court judges hear misdemeanor appeals from lower courts. In districts without Criminal Courts, criminal cases are handled at the trial level by Circuit Court judges.

CHANCERY COURTS are a good example of the court system's English heritage, and are courts of "equity," hearing only civil cases. Chancery Courts handle a variety of issues including civil lawsuits, contract disputes, application for injunctions and name changes. A number of matters, such as divorces, adoptions, and workers' compensation, can be heard in either chancery or circuit court.

PROBATE COURTS are created by the legislature and given jurisdiction over probate of wills and administration of estates. Probate judges also handle conservatorships and guardianships.

TENNESSEE JUDICIAL SYSTEM

Courts of Limited Jurisdiction

GENERAL SESSIONS COURT jurisdiction varies from county to county in Tennessee, based on statutes and private acts enacted by the legislature. Every county is served by a court of limited jurisdiction, which hears civil and criminal cases, including matters that at one time were handled by local justices of the peace. Civil jurisdiction of General Sessions Courts is restricted to specific monetary limits and types of actions. Criminal jurisdiction is limited to preliminary hearings in felony cases and trials of misdemeanor cases in which a defendant waives the right to a grand jury investigation and trial by jury in Circuit or Criminal Court. General Sessions judges also serve as juvenile judges in all counties except those in which the legislature has established a separate Juvenile Court. The judges are elected to eight-year terms.

JUVENILE COURT jurisdiction is vested in General Sessions Courts in all counties except those in which the law establishes special Juvenile Courts. Juvenile Courts have exclusive jurisdiction in proceedings involving minors alleged to be delinquent, unruly, dependent, and neglected. Juvenile Courts also have concurrent jurisdiction with Circuit, Chancery, and Probate Courts in some areas.

MUNICIPAL COURT, also known as City Court, has jurisdiction in cases involving violations of city ordinances. Generally, a city judge has authority to assess fines up to \$50 and jail sentences up to 30 days. However, the jurisdiction varies widely from city to city. About 253 Tennessee cities have Municipal Courts.



County courthouses serve both state trial courts and courts of limited jurisdiction, as well as other county functions. Shown are the courthouses for Marshall, Davidson, and Grundy Counties.

Administrative Office of the Courts

THE ADMINISTRATIVE OFFICE OF THE COURTS (AOC) provides support services to the Tennessee Supreme Court and the entire state court system. The director, appointed by the Supreme Court, is administrative officer for the courts and oversees the AOC. Duties of the office include preparing the court system's annual budget; providing judicial education, law libraries, computers, other equipment, training, and technical support for judges and other court personnel; assisting judges with case assignments; administering payroll for the court system; conducting orientation for new judges; administering the official state criminal court reporters system; providing assistance to judicial committees; compiling data; and disbursing funds to court-appointed attorneys representing indigent defendants.

Court Clerks

COURT CLERKS insure the efficient operation of the state courts by maintaining dockets and records, handling administrative matters and serving as goodwill ambassadors to the public.

The clerk of the appellate courts is appointed by the Supreme Court for a six-year term and is based in Nashville, the Middle Division. The appellate court clerk oversees the chief deputies and the deputy clerks, who serve each grand division.

Circuit Court clerks, elected in each county for four-year terms, also serve as General Sessions Court clerks in counties without designated General Sessions Court clerks. Clerks also are elected in counties with Probate and Criminal Courts.

Each Chancery Court is served by a clerk and master, who is appointed by the Chancery Court judge for a six-year term.



The Administrative Office of the Courts is located in downtown Nashville, near the Tennessee Supreme Court building and the Tennessee Statehouse.

Tennessee Supreme Court



The **TENNESSEE SUPREME COURT** is the state's highest court and the court of last resort. The five justices review civil and criminal cases appealed from lower state courts. They interpret the laws and constitutions of Tennessee and the United States.

The judges are appointed by the governor, confirmed by the legislature, and then elected every eight years on a "yes-no" retention vote. They represent each of the state's grand divisions - West, Middle, and East Tennessee. By constitutional mandate, the court normally meets in Nashville, Jackson, and Memphis.

Under the 1992 Appellate Court Improvements Act, the Supreme Court may assume jurisdiction over undecided cases in the state Court of Appeals or Court of Criminal Appeals when

there is a special need for a speedy decision. The court also has appellate jurisdiction in cases involving state taxes, the right to hold public office and issues of constitutional law.

If requested, attorneys may present oral arguments before the Supreme Court. Unlike trials in lower courts, there are no witnesses, juries or testimony. After the justices have heard oral arguments and reviewed the attorneys' written materials, or briefs, they issue written decisions, known as opinions.

Tennessee Supreme Court opinions on federal constitutional issues can be appealed only to the United States Supreme Court, which may or may not agree to consider the appeal.

Tennessee Supreme Court Justices

Chief Justice Jeffrey S. Bivins

Born August 31, 1960, Kingsport, TN; Married; two children; Independent Christian; Graduate of Lynn View High School, 1978; B.A., East Tennessee State University, 1982; J.D. Vanderbilt University School of Law, 1986; private practice, Boulton, Cummings, Conners & Berry, Nashville, TN, 1986-95; 2001-2005; Assistant Commissioner and General Counsel, Tennessee Department of Personnel, 1996-1999, 2000-2001; Appointed to Circuit Court, 21st Judicial District, 1999 by Gov. Don Sundquist; Appointed to Circuit Court, 21st Judicial District, 2005 by Gov. Phil Bredesen; Elected 2006; Tennessee Judicial Evaluation Commission; Tennessee Court of the Judiciary; John Marshall American Inns of Court; Williamson County Bar Association; Tennessee Bar Foundation; Nashville Bar Foundation; Tennessee Judicial Conference Co-Chair of Compensation and Retirement Committee, Member of Executive Committee, Member of Criminal Pattern Jury Instructions Committee; Former County Commissioner for Williamson County; Former Member, Williamson County Library Board of Trustees; Former softball coach and board member of Girls Softball Association of Franklin; Appointed to Court of Criminal Appeals, in 2011 by Gov. Bill Haslam; appointed to the Tennessee Supreme Court in 2014; became Chief Justice in 2016.



Justice Cornelia A. Clark

Born September 15, 1950, Franklin, TN; B.A. Vanderbilt University, 1971; M.A.T. Harvard University, 1972; J.D. Vanderbilt School of Law, 1979; Articles Editor, Vanderbilt Law Review; private practice, Farris, Warfield & Kanaday 1979-1989; Circuit Judge, 21st Judicial District, 1989-1999; Director, Tennessee Administrative Office of the Courts, 1999-2005; Instructor, Vanderbilt University School of Law 1990-2000; faculty member, American Institute for Justice, Inc.; member, Williamson County, Tennessee, and American Bar Associations, American Judicature Society; Member and former Board of Directors member, Lawyers Association for Women, Marion Griffin Chapter and Tennessee Lawyers' Association for Women; Member and former Second Vice President, Nashville Bar Association; Fellow of the American and Nashville Bar Foundations; Fellow and former Board chair, Tennessee Bar Foundation; Member, ABA Commission on the American Jury 2004-05; Chair, Tennessee Judicial Council 2006-10; United Methodist Publishing House Board; Vanderbilt Law School National Council 2009-12; 2005 Liberty Bell Award recipient by the Williamson County Bar Association; 2010 Appellate Judge of the Year, American Board of Trial Advocates; 2010 inductee Nashville YWCA Academy for Women of Achievement; 2010 Appreciation Award, TCJFCJ; Board of Directors, Franklin/Williamson County Chamber of Commerce 1987-89; Franklin First United Methodist Church; Appointed to Supreme Court September 2005; served as Chief Justice 2010-12.



TENNESSEE JUDICIAL SYSTEM

Justice Sharon G. Lee

Born December 8, 1953, Knoxville, TN; a life-long resident of Monroe County; has two daughters; attended Vanderbilt University; graduated from the UT College of Business with high honors and the UT College of Law; private practice, Madisonville, TN 1978-2004; member of the Tennessee Bar Association, served in the House of Delegates; member and former Director of the Tennessee Lawyers Association for Women; Member and former President of the East Tennessee Lawyers Association for Women; fellow of the American, Tennessee and Knoxville Bar Foundations; member of the Dean's Council for the UT College of Law; formerly an adjunct faculty member of the UT College of Law; Member of the Board of Directors of the East Tennessee Historical Society, the Knoxville YWCA, and the Sequoyah Birthplace Museum; formerly served as attorney for Monroe County and the Cities of Madisonville and Vonore; City Judge for Madisonville; recipient of the Spotlight Award from the National Association of Women Judges, the Spirit of Justice Award from the East Tennessee Lawyers Association for Women, the Distinguished Alumna Award from the Webb School of Knoxville, the Alumni Professional Achievement Award from the University of Tennessee; YWCA Tribute to Women Award, and Woman of Achievement Award from the Girl Scouts Council for the Southern Appalachians; first woman to serve as a Judge on the Eastern Section of the Tennessee Court of Appeals, appointed June 2004, elected August 2004, re-elected 2006; appointed to the Supreme Court October 2, 2008; served as Chief Justice 2014-16.



Justice Holly Kirby

Born in 1957, Memphis, TN; Married, two children; Presbyterian; Graduate of Columbia Central High School, Columbia, Tenn.; B.S. in Engineering, University of Memphis, 1979 (Magna Cum Laude, Herff and Honors Alumni Scholarship); J.D., University of Memphis School of Law, 1982 (Herff Scholarship; Law Review, Notes Editor); admitted to bar in 1982; Law Clerk to the Honorable Harry W. Wellford, Sixth Circuit, U.S. Court of Appeals, 1982-1983; practiced law in Memphis, 1983-1995 (first female partner in law firm Burch, Porter & Johnson); Tennessee Appellate Court Nominating Commission 1989-1994, Chairperson, 1994; Leo Bearman, Sr. American Inn of Court, 1995-1998; University of Memphis Award for Outstanding Young Alumna, 1996; University of Memphis College of Engineering Outstanding Alumnus, 2002; elected to Memphis Bar Foundation, 2007; appointed to Court of Appeals in 1995 by Governor Don Sundquist (first woman to serve on Court of Appeals); elected 1996; re-elected to eight-year terms in 1998 and 2006; appointed to the Tennessee Supreme Court in 2014 by Gov. Bill Haslam.



Justice Roger A. Page

Born October 7, 1955, Henderson, TN; Married to Carol McCoy, Davidson County Chancery Court Judge; two sons, three grandchildren; Southern Baptist; Graduate of Chester County High School, 1973; University of Tennessee College of Pharmacy, 1978, with Honors; J.D., University of Memphis, 1984, with High Honors; Law Review Articles Editor; Law Clerk for the Honorable Julia Smith Gibbons, Western District of Tennessee, U.S. District Court, 1984-1985; private practice, Peterson, Young, Self, & Asselin, Atlanta, GA, 1985-1987, and Holmes, Rich, Sigler, & Page, Jackson, TN, 1987-1992; Assistant Attorney General, 1992-1998; Jackson/Madison County Bar Association; Tennessee Bar Association; Tennessee Bar Foundation; Tennessee Judicial Conference, Executive Committee Member, Legislative Committee (co-chair), Compensation and Retirement Committee, Past Chairperson of Bench-Bar Committee; Tennessee Appellate Judge Performance Evaluation Commission, 2004-2009; Howell Edmunds Jackson American Inn of Court, President-Elect; Jackson Lions Club, Member and Past President; Dixie Youth baseball coach; Senior Olympics Softball, City Champions; elected to Circuit Court, 26th Judicial District, 1998; re-elected 2006; appointed to Court of Criminal Appeals by Governor Bill Haslam, December 2011; elected 2012; re-elected to full eight-year term in 2014; appointed to the Tennessee Supreme Court by Governor Bill Haslam, January 2016; first appellate court appointee subject to confirmation by the Tennessee Legislature pursuant to the 2014 amendment to the Tennessee Constitution; unanimously confirmed by the Senate and House of Representatives on February 22, 2016.



Tennessee Court of Appeals



Photo of current Court of Appeals: Court of Appeals judges are (seated from left) Frank G. Clement, Jr., Charles D. Susano, Jr., J. Steven Stafford. (Standing from left) Arnold B. Goldin, Thomas R. Frierson II, Richard H. Dinkins, D. Michael Swiney, Andy D. Bennett, John Westley McClarty, Neal McBrayer, Brandon O. Gibson, and Kenny Armstrong.

The **COURT OF APPEALS**, created by the General Assembly in 1925, hears appeals in civil – or non-criminal – cases from trial courts and certain stateboards and commissions. The court has 12 members who sit in panels of three in Jackson, Knoxville, and Nashville. All decisions made by the Court of Appeals may be appealed, by permission to the Tennessee Supreme Court. No witnesses, juries of testimony are presented before the Court of Appeals. Instead, attorneys present oral and written arguments.

Court of Appeals judges are elected on a “yes-no” ballot every eight years. When a vacancy occurs on the intermediate appellate court, the 11-member Governor’s Council for Judicial Appointments interviews applicants and recommends three candidates to the governor.

The governor appoints a new judge, who must then be confirmed by the legislature to serve until the next August general election, when they are subject to the retention vote.

Tennessee Court of Criminal Appeals



Photo of current Court of Criminal Appeals: Court of Criminal Appeals judges are (seated from left) Norma McGee Ogle, James Curwood Witt, Jr., Thomas T. Woodall, John Everett Williams, and Alan E. Glenn. (Standing from left) Timothy L. Easter, Robert L. Holloway, D. Kelly Thomas, Jr., Robert W. Wedemeyer, Camille R. McMullen, Robert H. Montgomery, Jr., and Judge J. Ross Dyer.

The **COURT OF CRIMINAL APPEALS**, created by the legislature in 1967, hears trial court appeals in felony and misdemeanor cases, as well as post-conviction petitions. The Tennessee General Assembly increased the membership of the court from nine to 12 on September 1, 1996. The members sit monthly in panels of three in Jackson, Knoxville, and Nashville. They also meet in other places as necessary.

All Court of Criminal Appeals decisions may be appealed to the state Supreme Court by permission, except in capital cases, which are appealed automatically. No witnesses, juries, or testimony are presented in the Court of Criminal Appeals. Instead, attorneys present oral and written arguments. Court of Criminal Appeals judges serve eight-year terms. Judges are elected on a “yes-no” ballot every eight years.

When a vacancy occurs on the intermediate appellate court, the 11-member Governor’s Council for Judicial Appointments interviews applicants and recommends three candidates to the governor. The governor appoints a new judge, who must then be confirmed by the legislature to serve until the next August general election, when they are subject to the retention vote.

FEDERAL COURT SYSTEM

The federal judicial branch of government is composed of the federal courts. The United States Supreme Court is the highest court in the federal system and has the last word on issues of federal law and federal Constitution. The courts just below the U. S. Supreme Court, the intermediate federal courts, are known as circuit courts of appeal. There are 13 federal circuit courts in the U. S. Tennessee is within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, which includes Kentucky, Ohio, and Michigan.

The federal trial court in which federal lawsuits originate is the federal district court. Tennessee is divided into three federal districts - western, middle and eastern. Cases originating in the federal district courts in Tennessee are appealed to the United States Court of Appeals for the Sixth Circuit.

Federal courts may constitutionally hear only two types of cases: cases involving a federal law question and cases involving citizens of two different states when the amount in dispute is greater than \$75,000.



GLOSSARY OF LEGAL TERMS

acquit - To find a defendant not guilty in a criminal trial.

adjudication - A judgment or decree.

affidavit - A written or printed declaration or statement under oath.

affirm - The ruling of an appellate court that the judgment of a lower court is correct and should stand.

appeal - Review of a case by a higher court.

appellant - Party appealing a decision or judgment to a higher court.

appellee - The party against whom an appeal is filed.

arbitration - The hearing and settlement of a dispute between opposing parties by a third party whose decision the parties have agreed to accept.

arraignment - A court hearing in a criminal case where a defendant is advised of the charges and asked to plead guilty or not guilty.

bail bond - An agreement by a third party to pay a certain sum of money if the defendant fails to appear in court.

bench trial - Trial held before judge sitting without a jury; jury waived trial.

bench warrant - Process issued

by the court or "from the bench" for the attachment or arrest of a person. binding over - The act by which a court or magistrate requires a person to enter into a recognizance or furnish bail to appear for trial, to keep the peace, to attend as a witness, etc. The term also describes act of lower court in transferring case to higher court or to grand jury after a finding of probable cause to believe that defendant committed crime.

brief - A legal document, prepared by an attorney, which presents the law and facts supporting his or her client.

caseload - The number of cases a judge handles.

cause of action - A legal claim.

certiorari - A procedure for removing a case from a lower court to a higher court for review.

change of venue - Moving a case from one court, or location, to another.

civil law - All law that is not criminal law.

class - There are five classifications of felonies and three classifications of misdemeanors. With the exception of murder in the first degree, all felonies in the Revised Criminal Code, in the old Title 39 and in titles other

than Title 39 are classified. Each felony has an A, B, C, D, or E classification. "A" is the most serious and "E" is the least serious. Each misdemeanor has either an A, B, or C classification with "A" being most serious and "C" being least serious. Murder in the first degree carries three possible penalties: life (with the possibility of parole), life without parole, and death.

code - A collection of laws promulgated by legislative authority.

common law - A system of jurisprudence based on precedent rather than statutory laws.

commutation - Change of punishment from a greater to a lesser degree or ending a sentence that has been partially served.

corpus delicti - The body or material substance upon which crime has been committed; e.g., the corpse of a murdered person or the charred remains of a burned house.

de novo - "Anew." A trial de novo is a completely new trial.

declaratory judgment - A judgment declaring the rights of the parties on a question of law.

decree - Decision or order of the court. A final decree completes

GLOSSARY OF LEGAL TERMS

the suit; an interlocutory decree is provisional or preliminary.

default judgment - Under Rules of Civil Procedure, when a party against whom a judgment for affirmative relief is sought has failed to plead (i.e., answer) or otherwise defend, he is in default and a judgment by default may be entered by either the clerk or the court.

defendant - A person charged with a crime or a person against whom a civil action is brought.

deposition - Sworn testimony taken outside the courtroom according to the rules of the court.

discovery - A pretrial proceeding where a party to an action may be informed of the facts known by other parties or witnesses.

docket - Book containing entries of all proceedings in a court.

double jeopardy - Prohibition against more than one prosecution for the same crime.

due process - Constitutional guarantee that an accused person receives a fair and impartial trial.

en banc - "On the bench." All judges of a court sitting together to hear a case.

et al. - "And others."

ex parte - A proceeding brought for the benefit of one party only without notice to or challenge

by an adverse party.

felony - A serious criminal offense for which the minimum sentence is one year.

grand jury - A panel of citizens sworn to inquire into crime and if appropriate bring accusations, or indictments, against the suspects.

guardian ad litem - A person appointed by a court to manage the interests of a minor or incompetent person whose property is involved in litigation.

habeas corpus - "You have the body." A writ of habeas corpus requires that a person be brought before a judge. It is usually used to direct an official to produce a prisoner so the court may determine if liberty has been denied without due process.

indictment - Written accusation of a grand jury charging a crime.

injunction - Court orders prohibiting specific actions from being carried out.

interrogatories - Written questions which must be answered under oath.

judgment - Final determination by a court.

judgment document - Document that explains the sentence an offender receives from a trial court.

jurisprudence - The science of law.

limited jurisdiction - Courts limited in the types of cases they may hear.

litigant - Person or group engaged in a lawsuit.

misdemeanor - Criminal offense that is less than a felony and punishable by less than a year in jail.

mitigating circumstances - Do not justify or excuse an offense, but may be considered as reasons for reducing the degree of blame.

motion - Oral or written request before, during or after a trial on which a court issues a ruling or order.

moot - Unsettled or undecided.

negligence - The absence of ordinary care.

nolo contendere - Latin phrase meaning "I will not contest it;" a plea in a criminal case which has a similar legal effect as pleading guilty. A defendant may plead nolo contendere only with the consent of the court.

opinion, per curiam - Phrase used to distinguish an opinion of the whole court from an opinion written by only one judge.

parole - The conditional and

revocable release of an inmate by the Board of Probation and Paroles to parole supervision.

peremptory challenge - Procedure for rejecting prospective jurors without a reason. Each side is permitted a limited number of peremptory challenges.

power of attorney - Document authorizing another to act as one's agent or attorney in fact (not an attorney at law).

probable cause - Reasonable belief that a crime has been committed; the basis for all lawful searches. probate - The legal process of establishing the validity of a will and settling an estate.

probation - A sentence of confinement which is suspended upon a term of probation supervision. It may include community service or restitution or both. Probation must automatically be considered if the defendant is eligible.

pro bono - Legal services provided without attorney fees. pro se - Legal representation of oneself.

pro tem - "Temporary."
recess - A short interval during which court suspends business, but without adjourning.
remand - To send back.

sentence, concurrent - Two or more sentences which run at the same time.

sentence, consecutive - Two or more sentences which run one after another.

sentence, determinate - A sentence that states exactly the time to be served or money to be paid.

sequester a jury - To place members of a jury into 24-hour a day seclusion until a verdict is reached.

settlement conference - A meeting between parties of a lawsuit, their attorneys and a judge to attempt a resolution of the dispute without a trial.

statute - A law created by the Legislature.

stay - Halting a judicial proceeding by order of the court.

subpoena - A written legal notice requiring a person to appear in court and give testimony or produce documentary evidence.

subpoena duces tecum - "Under penalty you shall take it with you." A process by which the court commands a witness to produce specific documents or records in a trial.

tort - An injury or wrong

committed with or without force to the person or property of another giving rise to a claim for damages.

venue - The specific county, city or geographical area in which a court has jurisdiction.

voir dire - (pronounced "vwar-deer") - "To speak the truth." The process of preliminary examination of prospective jurors regarding their qualifications.

writ - A written court order directing a person to perform or refrain from performing a specific act.

writ of mandamus - An order issued by a court of superior jurisdiction commanding performance of a particular act by an inferior court or public official.

STATE OF TENNESSEE v. ERNESTO DELGADILLO RODRIGUEZ

Primary Issues for Oral Argument:

1. Whether, for the purposes of the offense of resisting arrest, the initial determination of the nature of an appellant's detention should be made by the trial judge as a matter of law or submitted to the jury.
2. Whether, for the purposes of the offense of resisting arrest, the assessment of the detention is viewed by an objective standard or by the subjective beliefs of either the officer or the appellant.
3. Whether the definition of "arrest," submitted by the State and included in the trial court's jury instruction for the offense of resisting arrest, misled the jury.
4. Whether the evidence was sufficient to support Mr. Rodriguez's convictions for resisting arrest and assault.

Facts

In July 2014, Ernesto Delgadillo Rodriguez lived with his girlfriend, Oleta Cruz, and her four children. Teresa Hatfield, Ms. Cruz's aunt, often stayed with the couple. On the morning in question, Mr. Rodriguez became unusually angry about his missing wallet. When Mr. Rodriguez produced a knife, Ms. Hatfield

called 9-1-1 to request assistance. According to Ms. Hatfield, Mr. Rodriguez purportedly slashed the tires on Ms. Cruz's van before throwing the knife into a nearby yard and walking away. Ms. Hatfield informed the dispatcher of the direction in which Mr. Rodriguez was walking, and she described the clothing Mr. Rodriguez was wearing. When relaying the information to the police, the dispatcher mentioned that the suspect may have been using alcohol and cocaine.

As Officer Kimber of the Knoxville Police Department approached the area, he observed a man who matched the description given in the 9-1-1 call. Officer Kimber pulled his patrol vehicle close to the man (Mr. Rodriguez) to "find out what's going on from him, [and to] try to get him back to the residence" so he could investigate the situation. Officer Kimber jumped out of his car quickly and asked Mr. Rodriguez "what's going on?" Mr. Rodriguez, who stopped to speak with him, said "nothing." Officer Kimber could smell alcohol, and he noticed that Mr. Rodriguez's pupils were "huge" and that his shirt was disheveled. Officer Kimber advised Mr. Rodriguez, "here's what's going to happen. I'm going to place you in handcuffs. You're not under arrest right now. We're just going back [to the residence] and find out exactly what all is going

on."¹ He said Mr. Rodriguez "seemed fine with it," describing him as calm and relaxed.

Mr. Rodriguez complied with Officer Kimber's directive to place his hands on the patrol car. Officer Kimber found no contraband or weapon during a pat-down. Officer Kimber put Mr. Rodriguez's left hand in the cuff but when he reached for Mr. Rodriguez's right hand, Mr. Rodriguez "reached straight down and grabbed his [own] pants with his right hand." Officer Kimber said "dude, don't do this. Give me your hand." Mr. Rodriguez kept saying, "I will. I will." However, he would not give Officer Kimber his right hand. Despite his best efforts, Officer Kimber could not get Mr. Rodriguez's right arm into the handcuff. When Mr. Rodriguez swung around with his elbow and a drawn fist, Officer Kimber did a "leg sweep," and took Mr. Rodriguez face down to the pavement. Officer Kimber, who weighed 250 to 260 pounds got on top of Mr. Rodriguez (described as "considerably smaller" than Officer Kimber) in further attempts to secure Mr. Rodriguez's right arm. Mr. Rodriguez was bleeding profusely from the take-down on the pavement. To Officer Kimber's amazement, Mr. Rodriguez did a one-arm push-up lifting Officer Kimber off the ground. Officer Kimber jumped to his feet because

¹ Officer Kimber later said he cuffed Mr. Rodriguez for "officer safety" until they "could figure out what was going on." He added during redirect examination that police department policy required him to cuff Mr. Rodriguez.

he could not hold Mr. Rodriguez on the ground. He then attempted to bend Mr. Rodriguez over the back of the patrol car. Officer Kimber radioed for help and told the backup officers to “step it up.”

Officer Thurman arrived to assist. He struck Mr. Rodriguez multiple times in the upper shoulder, screaming for Mr. Rodriguez to give him his right hand. When this proved unsuccessful, Officer Thurman “kneed” Mr. Rodriguez in the thigh area and then in the hamstring area to no avail. Officer Thurman next struck Mr. Rodriguez in the knee. When all of these attempts failed, Officer Thurman told Officer Kimber they would need to take Mr. Rodriguez to the ground again. During the ordeal, Mr. Rodriguez was “hollering and screaming.” The three tussled for some time on the ground, at times landing on top of one another. A third officer, Officer Baker, arrived and jumped into the fray. Officer Kimber handed a second set of cuffs to one of the other officers still struggling with Mr. Rodriguez. Finally, an officer successfully cuffed Mr. Rodriguez’s right hand with the second set of cuffs. Officer Kimber exclaimed “good grief.” The officers cuffed both sets of cuffs together. Officer Kimber said Mr. Rodriguez was in custody at that

point.²

As the men were catching their breath, Ms. Cruz came to the scene and screamed at the officers. When the officers noticed Mr. Rodriguez was having difficulty breathing, he was transported to the hospital by ambulance. A subsequent investigation revealed an outstanding warrant for child support. The warrant was apparently served on Mr. Rodriguez two days after the incident.³ Fourteen months later, Mr. Rodriguez was charged in a presentment with one count of resisting arrest and two counts of assault (as to Officer Kimber and Officer Thurman).⁴

Trial Court Action

At trial, the State presented the testimony of Michael Mays (911 custodian of records), Teresa Hatfield, Officer Kimber, and Officer Thurman. During out-of-jury proceedings the parties discussed the term “arrest” used in the resisting arrest statute. The parties and the trial court agreed the term has different meanings depending on the context. The State argued Mr. Rodriguez was under arrest “as a matter of law,” and the trial court agreed.⁵ At the State’s request and over Mr. Rodriguez’s objection, the trial

court included a definition of arrest taken from *State v. Ingram*, 331 S.W.3d 746, 757 (Tenn. 2011) in the following instruction it gave to the jury:

The defendant is charged in Count 1 of the Presentment with the offense of Resisting Arrest. To this offense, he has entered a plea of not guilty.

Any person who commits the offense of preventing or obstructing an arrest is guilty of a crime. For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:

- (1) that the defendant prevented and obstructed an arrest by a person known to be a law enforcement officer; and
- (2) that the defendant used force against the law enforcement officer; and
- (3) that the defendant acted intentionally.

DEFINITIONS

“Arrest” means the taking, seizing or detaining of the person of another, either by touching or putting hands on him, or by any

² Officer Kimber testified that he was investigating the domestic assault call when he encountered Mr. Rodriguez and attempted to place him in handcuffs but he acknowledged he did not have probable cause to arrest him.

³ Not necessarily relevant here, the officers returned to the home to investigate the domestic dispute claim. The investigation led to eventual charges of assault of Mr. Rodriguez’s girlfriend and his girlfriend’s aunt.

⁴ On a sidenote, the charges were originally dismissed in the general sessions court but were revived 14 months later. Mr. Rodriguez moved to dismiss the charges, alleging prosecutorial vindictiveness. The motion indicated the victims did not want to pursue the charges. An Immigration and Customs Enforcement (ICE) hold was placed on Mr. Rodriguez, and apparently ICE took Mr. Rodriguez into custody. In November 2014, the prosecution dismissed the charges, and ICE released Mr. Rodriguez. In May 2015, Mr. Rodriguez’s counsel sent a demand letter to the City of Knoxville seeking compensation for the injuries Mr. Rodriguez suffered during the encounter. In June 2015, Mr. Rodriguez was indicted on the resisting arrest and assault charges. The motion to dismiss was denied.

⁵ When discussing the proposed jury instructions, the trial court recognized that “a very important issue here is, was [Mr. Rodriguez] under arrest or not? If he wasn’t under arrest, he can hardly resist arrest. So it is a key question.”

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act which indicates an intention to take him into custody and subjects the person arrested to the actual control and will of the person making the arrest. An arrest may be affected without formal words or a station house booking. However, there must be actual restraint on the arrestee's freedom of movement under the legal authority of the arresting officer.

After deliberations, the jury convicted Mr. Rodriguez of resisting arrest and of the assault of Officer Kimber.⁶ Mr. Rodriguez was sentenced to six months and to eleven months twenty-nine days, respectively.

Court of Criminal Appeals Decision

In his appeal, Mr. Rodriguez argued (1) the definition of arrest included in the jury instructions misled the jury and (2) the evidence was insufficient to support his convictions. Mr. Rodriguez insisted he could not be guilty of resisting arrest because he was not being arrested. He claimed the definition of arrest, which included the phrase "seizing or detaining the person of another either by touching or putting hands on him," confused the jury by suggesting he was arrested simply because Officer Kimber "put his hands" on him. The Court of Criminal Appeals rejected these arguments and affirmed the convictions.

Permission to Appeal

⁶ The jury found Mr. Rodriguez not guilty of assaulting Officer Thurman.

Mr. Rodriguez applied for permission to appeal from the judgment of the Court of Criminal Appeals, and the Tennessee Supreme Court granted his application. Mr. Rodriguez is the appellant, and the State of Tennessee is the appellee.

Appellant (Ernesto Delgadilo Rodriguez) Argument

In the first issue, Mr. Rodriguez submits that the question of whether he was under arrest (like the issue of whether he intentionally resisted arrest) is a fact determination for the jury. He reasons that the "nature of detention" issue is an essential element of the offense of resisting arrest and that, pursuant to the Fifth and Sixth Amendments to the United States Constitution (and Article I, sections 8 and 9 of the Tennessee Constitution), a jury is required to determine a defendant's guilt as to every element of the offense beyond a reasonable doubt. See, e.g., *State v. Ducker*, 27 S.W.3d 889, 899 (Tenn. 2000). As a result, he insists the trial court cannot ignore this constitutional requirement by initially determining that a particular encounter was an arrest as a matter of law and allowing the jury to deliberate only as to whether a defendant intentionally resisted the arrest.

Second, Mr. Rodriguez insists that the assessment of the detention must be viewed by the subjective belief of the accused.

In other words, if a person must intentionally resist arrest to be found guilty under the statute, he must first know that he is being arrested. Mr. Rodriguez highlights Officer Kimber's testimony that he told Mr. Rodriguez he was not under arrest; that he did not have probable cause to arrest Mr. Rodriguez, and that he was unsure at the time what offense (if any) had been committed. Mr. Rodriguez concludes that because he had no reason to believe he was under arrest (accused's subjective belief) and was told by Officer Kimber he was not under arrest (officer's subjective belief), he could not intentionally resist arrest.

Third, Mr. Rodriguez argues that the definition of "arrest" included in the jury instructions misled the jury. As he argued in the Court of Criminal Appeals, the "arrest" definition included in the jury instruction seemed to characterize arrest as an interaction as simple as "putting hands" on a person when detaining him. According to Mr. Rodriguez, the State exploited this broad definition by reminding the jury during argument that Mr. Rodriguez was detained by Officer Kimber when he touched or put his hands on him. He claims that based on the improper instruction, the jury had no choice but to convict.

Finally, Mr. Rodriguez contends a sufficiency of the evidence analysis cannot be conducted because of the improper "arrest" definition contained in the jury instructions. Nonetheless, he contends the evidence is insufficient to support

his conviction for resisting arrest because the testimony failed to establish he was under arrest.

Appellee (State of Tennessee) Argument

First, the State agrees with Mr. Rodriguez that whether the act prevented or obstructed by a person was an “arrest” is an element of the offense that the State must prove, and the jury must find, beyond a reasonable doubt. The State submits that no legal authority indicates a trial court is authorized to determine the nature of the detention as a matter of law in the context of the resisting arrest statute as it does in a pre-trial suppression setting.

As to the second issue, the State insists the determination of whether the detention was an arrest should be viewed by an objective standard with a focus on whether an officer’s actions would indicate to a reasonable person that he was under arrest.

Third, the State argues the “arrest” definition inserted into the jury instructions by the trial court did not mislead the jury. On the contrary, the State submits that the trial court has an obligation to instruct the jury on the principles of law closely connected to the facts of a particular case. In this instance, the State contends the definition, derived from existing case law, was a correct statement of the law. The State rejects Mr. Rodriguez’s argument that this definition applies only in the search and seizure context and that the definition left the jury with no

choice but to convict.

Finally, the State contends the evidence is more than sufficient to support the resisting arrest conviction. The State specifically submits that under an objective standard, Mr. Rodriguez was clearly under arrest when he was placed in handcuffs, despite the officer’s remarks to the contrary. Because he was under arrest, his actions constituted resisting arrest as contemplated by the statute.

APPLICABLE LAW

Text of Tennessee Code Annotated Section 39-16-602 (Resisting Arrest)

39-16-602. Obstruction of law enforcement; preventing service of process – (a) It is an offense for a person to intentionally prevent or obstruct anyone known to the person to be a law enforcement officer, or anyone acting in a law enforcement officer’s presence and at the officer’s direction, from effecting a stop, frisk, halt, arrest or search of any person, including the defendant, by using force against the law enforcement officer or another; (b) Except as provided in § 39-11-611, it is no defense to prosecution under this section that the stop, frisk, halt, arrest or search was unlawful; (c) It is an offense for a person to intentionally prevent or obstruct an officer of the state or any other person known to be a civil process server in serving, or attempting to serve or execute, any legal writ or process; (d) A violation of this section is a Class B misdemeanor unless the defendant uses a deadly weapon to resist the stop, frisk, halt, arrest, search or

process server, in which event the violation is a Class A misdemeanor

Sufficiency of the Evidence Standard

In conducting a review of the sufficiency of the evidence, the inquiry is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307 (1979); After a jury finds a defendant guilty, the presumption of innocence is removed and replaced with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). Consequently, the defendant has the burden on appeal of demonstrating why the evidence is insufficient to support the jury’s verdict. *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). An appellate court does not weigh the evidence anew. *Evans*, 838 S.W.2d at 191. Rather, “a jury verdict, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts” in the testimony in favor of the State. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). “[T]he State is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom.” *Id.*

Constitutional Provisions Cited

U.S. Constitution, amendment V -- A No person shall . . . be deprived of . . . liberty . . . without due process of law.@

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U.S. Constitution, amendment VI -- AIn all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, . . . and to have the Assistance of Counsel for his defence.@

Tennessee Constitution, Article 1, section 8 -- AThat no man shall be taken or imprisoned, or disseized of his . . . liberties . . . or in any manner . . . deprived of his . . . liberty . . . but by the judgment of his peers or the law of the land.@

Tennessee Constitution, Article 1, section 9 -- AThat in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel; . . . and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the County in which the crime shall have been committed . . .@

CASE GLOSSARY

Jury Instructions - Instructions given by the trial judge to the jury after the parties have presented their evidence at trial to advise the jury of the law that applies to the facts of the case and the manner in which they are to conduct their deliberations.

Matter of Law - A legal term used to define a particular area that is the responsibility of the court concerning the interpretation of the law. A matter of law is distinguished from a matter of fact,

which, in a jury trial, is resolved by the jury.

Probable Cause - A reasonable belief that a crime has been committed.

STATE OF TENNESSEE v. DENTON JONES

Issues Raised by the Defendant, Denton Jones:

- (1) Whether the prosecution erred in “aggregating the value of property taken during separate instances of theft” under Tennessee Code Annotated section 39-14-105.
- (2) Whether the evidence “failed to establish that each of the separate instances of theft arose from a common scheme, purpose, intent or enterprise.”

Facts:

Frederick Smith, a security employee at the Parkside Drive Target in Knoxville, testified that the Defendant stole two fitness trackers with a total value of \$199.98 on April 28, 2014, three fitness trackers with a total value of \$329.97 on April 30, 2014, and two fitness trackers with a total value of \$259.98 on May 10, 2014. The Defendant was recorded by a surveillance camera on each of these occasions. Jim Elliott, a security employee at the Town Center Boulevard Target, testified that the Defendant stole two fitness trackers with a total value of \$259.98 on April 30, 2014, and one fitness tracker valued at \$129.99 on May 12, 2014. The Defendant was again recorded by a surveillance camera. Mike Adams testified that he owned a business that bought and sold used items; his records showed that the Defendant sold

several fitness trackers to his business in April and May of 2014. (The Defendant received \$30 for each of the fitness trackers).

Trial Court’s Ruling

The Defendant was charged with theft of property valued between \$1,000 and \$10,000, a class E felony. He filed a motion to dismiss the theft charge on the basis that the prosecution improperly added the value of the property taken during the five separate incidents of theft so that the total was over \$1,000. (In other words, he argued that he should have been charged with five counts of theft of property valued at \$500 or less, which would have been five misdemeanors). After the trial court denied the motion to dismiss the charge, the case went to trial and the jury heard the evidence described in the above statement of facts. The jury found the Defendant guilty of theft of property valued between \$1,000 and \$10,000, and the trial court sentenced the Defendant to six years imprisonment. (The possible sentencing range for a class E felony is one to six years; the Defendant received the highest sentence in part because he had prior convictions.)

Court of Criminal Appeals’ Ruling

The Defendant appealed to the Court of Criminal Appeals, which

affirmed (upheld) the Defendant’s conviction. The Court of Criminal Appeals concluded that the prosecution was permitted to charge the Defendant with theft over \$1,000 by totaling the value of the property stolen in the five separate incidents.

Tennessee Supreme Court

After the Court of Criminal Appeals’ ruling, the Defendant asked the Tennessee Supreme Court to review this case. The Tennessee Supreme Court agreed to hear the case and will issue a written decision sometime after the oral argument.

Legal Arguments

As discussed below, the Defendant makes two arguments. First, he contends that Tennessee law does not allow the prosecution to aggregate the value of the items stolen in any case involving separate incidents. Second, he contends that aggregating the value of the items was not appropriate in this particular case. Stated differently, the key question is whether the Defendant committed one felony offense or five misdemeanor offenses. The Tennessee Supreme Court will have to decide the answer to this question.

Issue One

“A person commits theft of

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property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent." Tenn. Code Ann. ' 39-14-103(a). In denying the Defendant's motion to dismiss, both the trial court and the Court of Criminal Appeals relied on Tennessee Code Annotated section 39-14-105(b), which states:

(b)(1) In a prosecution for theft of property, theft of services, and any offense for which the punishment is determined pursuant to this section, the state may charge multiple criminal acts committed against one (1) or more victims as a single count if the criminal acts arise from a common scheme, purpose, intent or enterprise.

(2) The monetary value of property from multiple criminal acts which are charged in a single count of theft of property shall be aggregated to establish value under this section.

Tenn. Code Ann. § 39-14-105(b)(1)-(2) (emphasis added).

Both the trial court and the Court of Criminal Appeals concluded that section 105(b)(1) is unambiguous and that the prosecution may "charge multiple criminal acts committed against one (1) or more victims as a single count if the criminal acts arise from a common scheme, purpose, intent or enterprise." Tenn. Code Ann. § 39-14-105(b)(1). The Court of Criminal Appeals also emphasized that the statute does not require

that the separate thefts occur at the "same location."

Despite the language in the statute, the Defendant relied on the case of *State v. Byrd*, 968 S.W.2d 290 (Tenn. 1998). In that case, the Supreme Court explained that "[a]ggregation of separate thefts is generally permissible where separate larcenous acts are: (1) from the same owner[s]; (2) from the same location; and (3) pursuant to a continuing criminal impulse or a single sustained larcenous scheme." As the Defendant asserts, the requirement in *Byrd* that the acts be committed against the same owner in the same location affects the result in this case, which involved two different Target stores.

In addition, the Defendant argues that the legislature enacted section 105(b)(1) to address theft of services cases and not theft of property cases. For example, he references a legislator's comments to the House Judiciary Committee on March 6, 2012, which indicated that the statute was intended to punish "Ponzi schemes" with longer sentences by aggregating the amounts involved in otherwise separate incidents. However, the Court of Criminal Appeals noted that the legislative history is considered only when a statute is ambiguous; here, the court found that section 105(b)(1) is unambiguous.

Issue Two

Even if aggregation is allowed in some cases under the

statute, the Defendant argues that aggregation was improper in this case because the offenses did not arise from a "common scheme, purpose, intent or enterprise" as required under section 39-14-105(b)(1). Again, his main argument is that the incidents took place at different times and at different locations. In rejecting the Defendant's argument, the Court of Criminal Appeals said the following:

On five separate occasions, the defendant entered two different Target stores and stole fitness trackers. On each occasion, the defendant worked the fitness trackers free of theft deterrent devices before placing them behind other merchandise on a nearby shelf. He then walked around until the coast was clear before returning to retrieve the merchandise. Then he concealed the purloined merchandise and left the store. The defendant wore nearly identical clothing during each of the offenses. After taking the fitness trackers from Target without paying for them, he sold them to [the same store]. In our view, this evidence established that each of the separate thefts arose "from a common scheme, purpose, intent or enterprise."

CASE GLOSSARY

1. District Attorney General: The District Attorney General ("DA") is an elected official who is responsible for the prosecution of criminal cases in a county or a judicial district. The DA is assisted by a staff of Assistant District Attorneys General ("ADA"). The

DA is often referred to as “the prosecutor” or “the State.”

2. Defendant/Appellant: A defendant is any individual who is charged with committing a crime. The Defendant in this case is also known as the Appellant because he has appealed his conviction to the Tennessee Court of Criminal Appeals and the Tennessee Supreme Court.

3. Statutes and Precedent: Statutes are laws passed by the legislature. They are found in the Tennessee Code Annotated, which is divided into titles, chapters, and parts. The statute in this case, Tennessee Code Annotated section 39-14-105, is found in Title 39, which includes all criminal offenses; chapter 14, which includes crimes involving property; and part 1, which includes crimes involving theft. Statutes are interpreted and applied by the courts. Prior cases decided by the Courts, such as *State v. Byrd*, are considered “precedent.” A legal doctrine known as *stare decisis* dictates that the Court generally will try to resolve a case in a way that is consistent with other similar cases (precedent).

4. Theft of Property: “A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner’s effective consent.” Tenn. Code Ann. ‘ 39-14-103(a).

5. Theft of Services: “A person commits theft of services who: (1) Intentionally obtains services by

deception, fraud, coercion, false pretense or any other means to avoid payment for the services. . . .” Tenn. Code Ann. ‘ 39-14-104(1).

6. Felony: Felonies in Tennessee are categorized by statute as Class A, B, C, D or E felonies. These are serious crimes. For example, a defendant with no prior criminal history may receive a sentence of 15 to 25 years in prison if convicted of a Class A felony. A defendant with no prior criminal history may receive a sentence of one to two years in prison if convicted of a Class E felony. The sentences may be higher if the defendant has prior criminal convictions, as in the present case.

7. Misdemeanor: Misdemeanors in Tennessee are categorized by statute as Class A, B or C misdemeanors. The punishment for a misdemeanor conviction is less than the punishment for a felony conviction. For example, the sentence for a Class A misdemeanor cannot exceed 11 months and 29 days in jail, i.e., less than one year.

“ In the eye of the law there is, in this country, no superior or dominant ruling class of citizens. There is no caste here. Our Constitution is colorblind. All citizens are equal before the law. The humblest is the peer of the most powerful under the law. ”

John Marshall Harlan, 1896





Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407
(615) 741-2681
www.tncourts.gov
