IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION, AT NASHVILLE

No. M2014-00524-COA-R3-CV

THE TENNESSEAN, et al

Petitioners/Appellants

vs.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

Respondent/Appellee

and

DISTRICT ATTORNEY VICTOR S. JOHNSON, STATE OF TENNESSEE AND JANE DOE

Intervenors/Appellees

On Appeal from the Davidson County Chancery Court No. 14-156-IV

APPLICATION OF TENNESSEE PRESS ASSOCIATION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF

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ISSUES PRESENTED FOR REVIEW

The Tennessee Press Association ("TPA") presents this proposed amicus curiae brief for the purpose of addressing the following:

1. The proper interpretation of the ruling of the Tennessee Supreme Court in Appman v. Worthington, 746 S.W.2d 165 (1987 Tenn. LEXIS 1017).

2. Whether the observation in a footnote by the Trial Court that constitutional provisions and claims submitted thereunder were "without merit" was a proper interpretation of the law.

STATEMENT OF THE CASE

TPA adopts the Statement of the Case as submitted and set forth in the Brief of the Appellants.

STATEMENT OF FACTS

TPA adopts the Statement of Facts as set forth by the Appellants in their Brief.

THE APPMAN DECISION

In November of 1987, the Tennessee Supreme Court published its decision in a case known as Appman v. Worthington, 746 S.W.2d 165, 1987 Tenn. LEXIS 1017. This ruling has interwoven itself into the deliberations, discussions, holdings, arguments and briefs of the trial court and all parties to the present litigation. It is respectfully averred by TPA that there exists a sharp dispute regarding the Appman decision and its meaning. In order to ascertain the true purpose, meaning and intent of Appman, a thorough examination should be made of the case itself, the rules of statutory construction and cases which have followed it.

Appman was precipitated by a Public Records Act request made by two criminal defense attorneys in an attempt to sidestep or circumvent the Rules of Criminal Procedure. John Appman, an attorney in Jamestown, Tennessee, and Herbert Moncier, an attorney in Knoxville, Tennessee, were representing inmates implicated in the murder of a fellow inmate, Carl Estep, at the Morgan County Regional Correctional Facility in January of 1985.

Mr. Moncier and Mr. Appman were seeking the *entire file* of the state regarding its investigation into the killing. Believing that their request for information would be resisted by the prosecution, the pair made a conscious decision to make their application for the entire investigative file of the Department of Corrections pursuant to the provisions of Tenn. Code Ann. §§10-7-503 and 10-7-505 and in reliance upon the recent decision of the Tennessee Supreme Court in Memphis Publ'g Co. v. Holt, 710 S.W.2d 513 (Tenn. 1986).

A copy of the Davidson County Chancery Court file, docket no. 85-1834-III, styled John E. Appman v. Sergeant James Worthington, et al, has been previously made a part of the record by the Appellees. Copies of relevant portions of that exhibit are appended to this Brief as Collective Exhibit A, pages 0001-0028. References herein will be made to Exhibit A and the page number.

The petition was filed by Attorneys Appman and Moncier in the Chancery Court for Davidson County, Tennessee, at Nashville, on the afternoon of September 20, 1985.[1] It alleged that two days prior to the filing, Mr. Appman had received a verbal denial of a request for the information from Sgt. Worthington. One day later, a similar denial was verbally conveyed to Mr. Appman by an Assistant District Attorney. An affidavit of Mr. Appman, filed as an exhibit to the Petition, verified these actions.[2] At the time of the filing of the petition, the Criminal Court for Morgan County had not ruled on any information request made by the petitioners pursuant to Rule 16 of the Tennessee Rules of Criminal Procedure.

The petition sought an Order of the Chancery Court requiring the prosecution to make available for inspection "the entire record of the State of Tennessee pertaining to the investigation of the death of Carl Estep, No. 100293, on or about January 15, 1985, at the Morgan County Regional Correctional Facility".[3] It also sought an Order allowing access to the records of the Department of Corrections "for the purpose of inspection of any and all records

[1] Exhibit A, page 0002.
[2] Exhibit A, page 0006.
[3] Exhibit A, page 0004, ¶3.

pertaining to the death of Carl Estep".[4] The Order was requested to be directed not only to Sgt. Worthington, but to "any and all other state employees or state officials to whom Sgt. Worthington might have transferred said records".[5] (emphasis supplied)

The core issue in the litigation was quickly recognized by both parties as reflected by a statement in the brief of the Petitioners filed September 27, 1985:

> Indeed, counsel for Respondent in his brief tacitly concedes the threshold question and focuses solely upon whether the requested documents are excepted from Tennessee's Public Records Act.[6]

The Public Records Act, Chapter 932, of the Public Acts of 1957 excepted from disclosure documents whose confidentiality was "provided by law or regulations made pursuant thereto". This remained the law until 1984 when the General Assembly enacted Chapter 929 of the Public Acts narrowing the exception to records made confidential by "state statute".

It was the contention of Appman and Moncier, that even though the Rules of Criminal Procedure had the "force of law", they were not a state statute for the purposes of Tenn. Code Ann. §10-7-503 and, therefore, their provisions, specifically Rule 16, did not function as an exception to the open records law.[7]

An examination of the scope of the document request made by the petitioners suggests that only a portion of the information they were seeking

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[4] Exhibit A, page 0004, ¶5.
[5] Exhibit A, page 0004, ¶5.
[6] Exhibit A, page 0009, ¶2.
[7] Exhibit A, page 0011, lines 4-10.

likely would have been made available to them pursuant to discovery under Rule 16.

The petition sought statements taken from inmate witnesses, statements taken from officers, statements of other employees of the Morgan County Regional Correctional Facility, statements taken from the mother and wife of the victim by Sgt. Worthington, statements taken by Criminal Investigator Clarence Robbins of the District Attorney's office and T.B.I. agent Jim Glover as well as evaluative summaries made by Sgt. Worthington for Warden Jones.[8]

Rule 16(a)(2), in pertinent part, provides:

> . . . this rule does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by the District Attorney General or other state agents or law-enforcement officers in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses.

It is clear from the request of the petitioners for "the entire file" and "any and all" documents and materials that it arguably exceeded the scope of discovery allowable under Rule 16(a)(2).

The focal point of the decision became the interaction of Tenn. Code Ann. §10-7-503 and Rule 16(a)(2) of the Tennessee Rules of Criminal Procedure when construed according to the standards of *STATUTORY CONSTRUCTION.* (emphasis supplied)

On September 23, 1985, three days following the filing of the petition, Judge Charles Eblen, holding the Morgan County Criminal Court, denied the

[8] Exhibit A, page 0014, lines 10-18; page 0015, lines 1-5.

discovery requests of petitioners in part and granted them in part. Notwithstanding that ruling, they persisted in the litigation.[9]

In a responsive pleading filed by Tennessee Attorney General Michael Cody, it was affirmatively asserted that the Rules of Criminal Procedure in Tennessee had the "force of law".[10] The pleading of the Attorney General was filed only five days after the filing of the petition. The case was clearly on a fast track.[11] The trial court announced its final judgment on September 30, 1985, five days following the filing of the brief of the Respondent by Attorney General Cody. Relevant language from that final judgment is as follows:

> . . . the Court finds that the petition should be denied because Rule 16 of the Tennessee Rules of Criminal Procedure creates an exception, in the case of an ongoing criminal prosecution, to T.C.A. §10-7-504, and that this exception *IS APPLICABLE TO THE MATTERS REQUESTED IN THIS PETITION.* (emphasis supplied)[12]

It is noteworthy that the court did not say that Rule 16 exempted all records. It simply held that the records as requested by the petitioners were exempted from disclosure by the provisions of Rule 16.

The petitioners appealed. The Court of Appeals ruled in favor of the petitioners holding that there was not an exception to Tenn. Code Ann. §10-7-503 provided by Rule 16. The Supreme Court disagreed. In its November, 1987 opinion, the court observed that, in the Chancery Court, there had been a finding

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[9] Exhibit A, page 0015, lines 11-15.
[10] Exhibit A, pages 0016-0017.
[11] Exhibit A, page 0014.
[12] Exhibit A, page 0023.

that the *DOCUMENTS REQUESTED* were related to an ongoing criminal prosecution and exempt from inspection under Rule 16.[13] (emphasis supplied)

The court found that the Rules of Criminal Procedure which became effective on July 13, 1978, "upon the governor's approval of a joint resolution of the legislature adopting the rules and have the force of law".[14]

> Rule 16 provides for the disclosure and inspection of categories of evidence in the possession of the state or in the possession of the defendant. However, the disclosure and inspection granted by the rule 'does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by . . . state agents or law enforcement officers in connection with the investigation or prosecution of the case, . . . ' Rule 16(a)(2) of the Rules of Criminal Procedure. This exception to disclosure and inspection does not apply to investigative files in possession of state agents or law enforcement officers, where the files have been closed and are not relevant to any pending or contemplated criminal action, but does apply where the files are open and are relevant to pending or contemplated criminal action. . . . (emphasis supplied)
>
> . . . It necessarily follows under Rule 16(a)(2) that access to the materials in the possession of Sergeant Worthington are not subject to inspection by appellees, who are counsel for the indicted petitioner-inmates.[15]

The opinion of the Supreme Court conveys two messages. The first message is that the Rules of Criminal Procedure, being promulgated by the Supreme Court and receiving the approval of a joint resolution of the legislature and signed by the Governor, have the force of law and, second, should be construed as having equal footing with a statute. If the Rules did not have equal

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[13] Appman v. Worthington, 746 S.W.2d 165, 166.
[14] Appman, supra, at 166; Tennessee Dep't of Human Services v. Vaughn, 595 S.W.2d 62, 1980 Tenn. LEXIS 417.
[15] Appman, supra, at 166.

footing with a statute, the Supreme Court could not have utilized the provisions of Rule 16 to modify the terms of Tenn. Code Ann. §10-7-503 which at that time only recognized exceptions created by "state statute". Therefore, of necessity, the rules of statutory construction had to have been applied by the Supreme Court in arriving at its decision.

This holding followed a 1980 decision wherein the Supreme Court stated:

> We respectfully differ with the Court of Appeals, and, while an extended discussion of the matter is not appropriate, we reject out of hand its conclusion that the 'Tennessee Rules of Civil Procedure are not laws.' These rules, along with the Rules of Criminal Procedure and the Rules of Appellate Procedure, are 'laws' of this state, in full force and effect, until such time as they are superseded by legislative enactment or inconsistent rules promulgated by this Court and adopted by the General Assembly.[16]

Since both the Rules of Criminal Procedure and Tenn. Code Ann. §10-7-503 are on equal footing as statutes, rules of statutory construction are relevant and important to an understanding of the Appman decision.

> The primary rule of statutory construction is 'to ascertain and give effect to the intention and purpose of the legislature.' LensCrafters, Inc. v. Sundquist, 33 S.W.3d 772, 777 (Tenn. 2000). Courts must do so without unduly restricting or expanding a statute beyond its intended scope. In re C.K.G., C.A.G., & C.L.G, 173 S.W.3d 714, 721-22 (Tenn. 2005). To determine legislative intent, one must look to the natural and ordinary meaning of the language used in the statute itself. We must examine any provision within the context of the entire statute and in light of its over-arching purpose and the goals it serves. State v. Flemming, 19 S.W.3d 195, 197 (Tenn. 2000); Cohen v. Cohen, 937 S.W.2d 823, 828 (Tenn. 1996); T.R. Mills Contractors, Inc. v. WRH Enterprises, LLC, 93

[16] Tennessee Dep't of Human Services v. Vaughn, 595 S.W.2d 62, 1980 Tenn. LEXIS 417.

> S.W.3d 861, 867 (Tenn. Ct. App. 2002). The statute should be read 'without any forced or subtle construction which would extend or limit its meaning.' National Gas Distributors, Inc. v. State, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes relating to the same subject matter or having a common purpose are to be construed together. In re C.K.G., C.A.G., & C.L.G., 173 S.W.3d at 722.
>
> As our Supreme Court has said, '[w]e must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning.' Scott v. Ashland Healthcare Center, Inc., 49 S.W.3d 281, 286 (Tenn. 2001), citing State v. Turner, 913 S.W.2d 158, 160 (Tenn. 1995). Courts must look to a statute's language, subject matter, objective or purpose, and the wrong it seeks to remedy or prevent. In re C.K.G., C.A.G., & C.L.G., 173 S.W.3d at 722. Courts are also instructed to 'give effect to every word, phrase, clause and sentence of the act in order to carry out the legislative intent.' Tidwell v. Collins, 522 S.W.2d 674, 676-77 (Tenn. 1975); In re Estate of Dobbins, 987 S.W.2d 30, 34 (Tenn. Ct. App. 1998).[17]

Considering these authorities, it should be abundantly clear that the chancellor was correct in holding that any exemption created by the Rules of Criminal Procedure were limited to those matters *not discoverable* under Rule 16(a)(2) by attorneys for the criminal defendant. All other materials are, as indicated in Tenn. Code Ann. §10-7-503, presumptively open to public inspection.

If this is not the appropriate interpretation of Appman, the intention of the legislature would be frustrated and thwarted and clear language of the Public Records Act would be ignored.

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[17] State ex rel. Irwin v. Mabalot, no. M2004-00614-COA-R3-CV, 2005 WL 3416293 (Tenn. Ct. App. Dec. 13, 2005); no appl. perm. appeal filed; Gates v. Perry, no. E2013-01992-COA-R9-CV, March 26, 2014 (copy appended to this Brief as Exhibit B).

The burden of proof for justification of non-disclosure of records is upon the official or designee of the official of those records and must be shown by a preponderance of the evidence. Tenn. Code Ann. §10-7-505(c). When a court rules upon a petition of any party proceeding under Tenn. Code Ann. §10-7-505, it shall have the authority to exercise full injunctive remedies and relief "to secure the purposes and intentions of this section, and this section *shall be broadly construed so as to give the fullest possible public access to public records.*" Tenn. Code Ann. §10-7-505(d). (emphasis supplied)

Accepting the argument that Appman provides some sort of an all-inclusive wraparound cloak of exclusion for all law enforcement investigative records as they may pertain to pending or contemplated criminal prosecution would simply be error and would frustrate, thwart and destroy the intent, purpose, meaning and function of Tenn. Code Ann. §§10-7-503 and 10-7-505.

In interpreting Appman, the Court of Criminal Appeals, in February of 1998, observed as follows:

> In Appman v. Worthington, 746 S.W.2d 165 (Tenn. 1987); the Tennessee Supreme Court held that documents in an active criminal case *which would not be subject to discovery and inspection under Tennessee Rule of Criminal Procedure 16 are not subject to inspection under the Public Records Act.* The Court reasoned that Rule 16's protection of certain material from discovery constituted an exception to Public Records Act inspection in an active criminal prosecution. In the case *sub judice,* Mr. Huskey alleges that Tennessee Rule of Criminal Procedure 16(b)(2) exempts the documents in question from inspection under the Public Records Act and thus the trial court should not permit inspection of the documents by the media. We disagree.[18]

[18] Knoxville News-Sentinel v. Huskey, 982 S.W.2d 359, 361, 1998 Tenn. Crim. App. LEXIS 237, perm. to appeal denied.

Documents of the sort covered by Rule 16(a)(2) that are in the possession of the office of the District Attorney General are not public records because they are among the class of records exempted from disclosure by state law, specifically the Tennessee Rules of Criminal Procedure.[19]

In cases where courts have focused their decision upon the interaction of Rule 16 of the Tennessee Rules of Criminal Procedure and Tenn. Code Ann. §10-7-503, the holdings have been in accord with the interpretation of Appman urged by TPA, specifically that the only exception to open records created by the rules are those documents and things that would not be discoverable by a party from another party under the rules of criminal procedure applicable to that litigation. All other matters in the litigation and contained in the files of the state are public records and subject to disclosure. The Court should, in the opinion of TPA, put to rest finally and completely the attempted mischaracterizations and overbroad interpretations of Appman being utilized on a consistent basis by records custodians, particularly law enforcement, as evidenced by the opinions stated in this litigation.

The steps required to be taken by a citizen seeking access to public records are challenging at best. An examination of these steps illustrates this point:

- First, the citizen must make the request of the records custodian pursuant to Tenn. Code Ann. §10-7-503.

[19] Swift v. Campbell, 159 S.W.3d 565, 2004 Tenn. App. LEXIS 561.

- Second, the custodian can then claim any state law exemption to which it believes itself entitled and it realistically becomes the obligation and burden of the citizen to overcome that position.

- Third, in the absence of an express exclusion, law enforcement can and frequently does assert the Appman doctrine which in turn imposes additional burdens and restrictions, to wit:

> (a) That the record sought is a public record pursuant to T.C.A. §10-7-503 and, if not, the inquiry stops. If it is public, the inquiry proceeds;
>
> (b) The citizen must then confront whether the record sought is relevant to pending or contemplated criminal prosecution. If not, the citizen should obtain the record. If it is, the inquiry proceeds further;
>
> (c) the citizen must then determine whether the information would be discoverable under Rule 16(a)(2) of the Tennessee Rules of Criminal Procedure. If it is, the record should be obtainable. If it is not, the record is unobtainable; and
>
> (d) If the citizen is unhappy with the decisions of the records custodian, in this instance law enforcement, the only recourse of the citizen is litigation pursuant to the provisions of T.C.A. §10-7-505 with the inherent costs, delay and inconvenience necessitated thereby.

This is the reason why, in the opinion of TPA, this Court should definitively rule and underscore the proposition that Appman is not a blanket exclusion from the Open Records Act, but rather is an exclusion which must be narrowly construed to provide the fullest possible access by the public to public records and is based upon discoverability. If something is discoverable, it is open to public inspection. If it is not discoverable, it is not. This exception only

applies to instances where Rule 16 considerations are required. All others are excepted.

This interpretation is entirely consistent with the opinion of the Supreme Court in Schneider v. City of Jackson, 226 S.W.3d 332, 345, 2007 Tenn. LEXIS 504, 35 Media L. Rep. 2237, wherein a blanket law enforcement privilege was rejected:

> Having examined the Public Records Act and prior Tennessee decisions, we conclude that the law enforcement privilege has not previously adopted as a common law privilege in Tennessee and should not be adopted herein. As a result, the law enforcement privilege is not a "state law" exemption to the Public Records Act.

Blanket privileges or exceptions are not favored and are inconsistent with and repugnant to the intent and purposes of the Public Records Act which "requires disclosure even in the face of serious countervailing considerations". Schneider, at 340.

THE CONSTITUTIONAL QUESTION

The concept of open government is particularly relevant in the United States because we as a nation and Tennesseans as a state have chosen a representative republican form of government. In short, the people have given to their government, which they have created, a limited right to conduct activities regulating itself and the society which it serves. The government is not absolutely powerful. The government does not have complete prerogatives in all matters, but in fact functions or should function as a servant of the people.

The Constitution of the United States of America was ratified by 11 states and became effective as a governing device on the 4th day of March, 1789. In 1791, the first ten amendments to the United States Constitution, known as the Bill of Rights, were ratified.

Tennessee ratified its first Constitution seven years after the ratification of the Constitution of the United States of America and only five years after the ratification of its Bill of Rights. Tennessee has had three Constitutions. The first was the Constitution of 1796, the second the Constitution of 1834 and the third and present Constitution which was adopted in 1870. Each of these three Constitutions, unlike the United States Constitution, has contained a separate article as part of the original document known as a "Declaration of Rights". In other words, the framers of the Tennessee Constitutions were so concerned about the rights of the people that they made a declaration of those rights an integral part of the Constitution itself and not an added afterthought as did the framers of the United States Constitution.

The drafters of the Tennessee Constitution in 1796 declared:

> That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness; for the advancement of those ends, they have at all times, an unalienable and indefeasible right to alter, reform or abolish the government in such manner as they may think proper.[20]

This recognition of the power of the people and the subservience of government to them was adopted and restated without modification as part of

[20] Constitution of 1796, Art. XI, § I.

the Declaration of Rights, Art. I, § I of the Constitution of 1834 and remains a part of the Declaration of Rights in Art. I, § 1 of the present Constitution.

If constitutional government is to have any validity and if the people are to exercise the rights guaranteed to them by their Constitutions, they must of necessity be able to inform themselves about the conduct of governmental activities and the individuals who serve the government in various official capacities, both elected and non-elected. The only way an electorate can accurately and competently exercise its prerogatives to maintain, alter, modify or dissolve its government is if it is provided the opportunity to obtain information necessary for an informed decision-making process. This is the concept which underlies, reinforces and provides the basis for all concepts of public records acts and public meetings laws. Government in secret deprives the citizens of their fundamental constitutionally guaranteed right to know and, hence, to govern themselves through their elected officials and governmental bodies effectively and intelligently.

In their wisdom, the drafters of the Tennessee Constitutions, like the framers of the United States Constitution, recognized that all persons could not always be present to observe all activities of their government. It was necessary for an informed electorate that some supplemental yet complimentary mechanism be recognized for the exchange of thoughts, ideas and information as well as their dissemination to the public generally as an aid to informing citizens of the activities of their government, thereby enhancing

their ability to govern themselves and to exercise their prerogative to alter, amend, modify or abolish their government as they see fit.

> No experiment can be more interesting than that we are now trying, and which we trust will end in establishing the fact, that man may be governed by reason and truth. Our first object should, therefore, be to leave open to him all the avenues to truth. The most effectual hitherto found, is the freedom of the press. It is, therefore, the first to be shut up by those who fear the investigation of their actions. The only security of all is in a free press. The force of public opinion cannot be resisted when permitted freely to be expressed. The agitation it produces must be submitted to. It is necessary, to keep the waters pure. The functionaries of every government have the propensities to command at will the liberty and property of their constituents. There is no safe deposit for these but with the people themselves, nor can they be safe with them without information. Where the press is free, and every man able to read, all is safe. No government ought to be without censors, and where the press is free, no one ever will. . . . --Thomas Jefferson

Thomas Jefferson was not alone in his views regarding the role of the people in the formation and guidance of their government. Nor was he alone in his opinion that a free press was essential to a free government. James Madison, addressing proposed amendments to the United States Constitution on June 8, 1789, agreed as he wrote:

> To the press alone, checquered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity over error and oppression. . . . The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and freedom of the press, as one of the great bulwarks of liberty, shall remain inviolable.

The historic recognition of the press as an appropriate and proper instrumentality to provide dissemination of critical information to the people

about their government was not lost on those charged with the drafting of Tennessee's first Constitution. To this end, the Constitution of 1796 provided:

> That the printing presses shall be free to every person who undertakes to examine the proceedings of the Legislature or of any branch or officer of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man; and every citizen may freely speak, right, and print on any subject, being responsible for the abuse of that liberty . . .[21]

This provision recognizing the freedom of the press and its responsibility to inform the people has been a part of the Declaration of Rights in all Tennessee Constitutions. It was Art. I, § XIX of the Constitution in 1834 and is Art. I, § 19 of our present Constitution.

The importance of the Declaration of Rights to this state and its people is further underscored and reinforced by the following:

> The declaration of rights hereto prefixed is declared to be a part of the Constitution of this State, and shall never be violated on any pretence whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is excepted out of the General powers of government, and shall forever remain inviolate.[22]

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> . . . in article 1, section 1 of the Bill of Rights prefixed to the Constitution of the State, it is declared all power is inherent in the people, and all governments are founded on their authority, and are instituted for their peace, safety and happiness; and for the advancement of these ends, they have, at all times, an indefeasible right to alter, abolish or reform their government as they may see fit. The subsequent sections of the Bill of Rights consist of those

[21] Constitution of 1796, Declaration of Rights, Art. XI, § XIX.

[22] Constitution of 1834, Art. XI, § XII; Constitution of 1870, Art. XI, § 16.

> absolute rights of personal security.--the right of personal liberty, and the right to acquire and enjoy property. These rights have been justly construed, and are declared by the Bill of Rights, to be natural, inherent and inalienable. The effectual security and enjoyment of them, depends upon the existence of civil liberty. They are solemn declarations of principles, to which every free person is entitled. These rights have been wrested, from time to time, from the English monarchs, and were brought to this country by our ancestors; and have been engrafted upon the Constitutions of the different states, differing in language but not in principle. *So careful were the framers of the Constitution to preserve these rights inviolate, they declared, in section 12, of the 11th article of the Constitution, the declaration of rights hereto prefixed is declared to be a part of the Constitution and shall never be violated, upon any pretext whatever.*[23] (emphasis supplied)

This powerful statement of constitutional assurances and guarantees was made by the Tennessee Supreme Court shortly after the tragedy of the American Civil War. If the printing presses are to be free to every person to examine the proceedings of the Legislature or any branch or officer of the government and if no law shall ever be made to restrain that right and if we are to do more than give lip service to a free communication of thoughts and opinions as an invaluable right of man, then we are required to give heed to the constitutional principles stated in State v. Staten. These constitutional principles, that all power is inherent in the people, the freedom of the press to examine the activities of government and persons to communicate freely their thoughts and opinions, have been a part of the Constitutions of this state for 218 years in unbroken succession. The concept that the Bill of Rights attached to the Constitution is a part thereof and shall forever remain inviolate has been

[23] State v. Staten, 46 Tenn. 235, 263-264 (1869).

a continuous part of the Constitutions of this state for 180 years. The right of self-governance, dependent as it is upon an adequate flow of information to the people about the activities of their government, has been of continued interest to the courts of this state. It is asserted that in Tennessee a citizen has no constitutionally assured right of access to the records of their government, but rather that right of access was created and is governed by the Public Records Act which was enacted in 1957. In contradiction to that position is a decision of the Tennessee Supreme Court which was authored over a half century before the Public Records Act came into existence. In that case, the Supreme Court drew an analogy between a citizen asking for records of their government and a member of a corporation asking for records from that organization. The use of the words "corporator" or "corporation" were used in that decision synonymously with citizen and government which allowed the court to reach its ultimate conclusion. Some of the observations in that opinion are more than relevant today.

> The fact that the corporator making application for the privilege of examining the books of the municipal corporation is politically hostile to the administration and to the custodian of the books furnishes no excuse for refusing to permit such examination, . . .
>
> ***
>
> The worry and inconvenience resulting from the examination of the books and records of a municipal corporation, and the fact that the transactions to be examined are numerous . . . furnish no sufficient reason for denying a corporator the right to examine such books.
>
> ***

> The right of a citizen and taxpayer of a city to make an examination of the books and papers of the city, in theory, is absolute, . . . [24]

When the Court of Appeals observed in Abernathy v. Whitley, 838 S.W.2d 211, 1992 Tenn. App. LEXIS 364, that "there is no generally recognized state or federal constitutional right of access to public records", the court was, apparently, unmindful of or had overlooked the decision in State, ex rel. Wellford v. Williams above quoted. It is respectfully submitted that there is and was in 1992, 1903 and prior to that time back to the very founding of this state in the eighteenth century, a constitutionally recognized right of access to governmental information and records by citizens. If the government is supposed to serve at the will of the people and if the government is created by the people who invest a certain portion of the powers which they inherently possess in that government for the purpose of the operation of an orderly society, and if the government must rest upon the consent of the governed, and if it is necessary to have an informed electorate and if the entire scheme of constitutional government in this country is to succeed, then it is incongruous to hold that the very Constitution created by these citizens who were concerned about their individual rights and wellbeing and wanted a series of checks and balances on the government would not assure those citizens a right of access to governmental records.

The government speaks through its records. The government's records contain volumes of information about how it is being operated and how

[24] State, ex rel. Wellford v. Williams, 110 Tenn. 549, 593, 75 S.W. 948, 958 (1903).

its money is being appropriated and spent and how it interacts with its citizens. The citizen's right to inquire into the records of their government has been recognized for over a century by judicial decision in this state.

> Tennessee's courts have long recognized the public's right to examine governmental records. Over one hundred years ago, the Tennessee Supreme Court held that Memphis residents concerned about the city's financial condition had the right to inspect the city's records. . . In 1957, the Tennessee General Assembly codified the public access doctrine when it enacted Tennessee's first public records statutes. . . The purpose of these statutes, mirroring the rationale of State ex rel. Wellford v. Williams, is to promote public awareness of the government's actions and to ensure the accountability of government officials and agencies by facilitating the public's access to governmental records. (citations omitted)[25]

TPA urges this Court to join its former member, Judge William C. Koch, Jr., and reaffirm the right guaranteed to the public by our Constitution and court decisions to access to governmental information.

Respectfully submitted, this 22nd day of May, 2014.

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[25] Swift v. Campbell, 159 S.W.3d 565, 570, 2004 Tenn. App. LEXIS 561.

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing Application of Tennessee Press Association for Leave to File an Amicus Curiae Brief has been mailed by placing same in the United States Mail, postage prepaid, to the following counsel of record:

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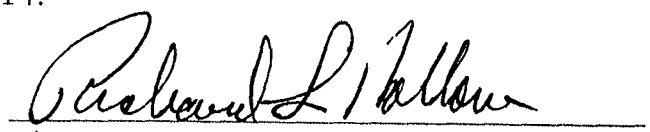
This 22nd day of May, 2014.



Richard L. Hollow

CRISTI SCOTT
CLERK & MASTER
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Davidson County

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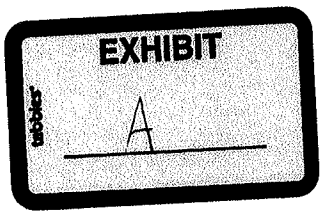
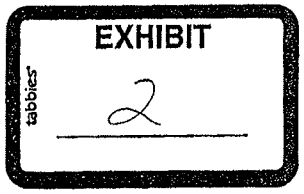
I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF ORIGINAL INSTRUMENTS IN **DOCKET NO. 85-1834-III** FILED IN THE CLERK & MASTER'S OFFICE THIS 21ST DAY OF FEBRUARY 2014.

BETH WELCH

BETH WELCH
DEPUTY CLERK, FILE ROOM





TO THE HONORABLE ~~C. ALLEN HIGH~~ Robert Brandt, CHANCELLOR,
SEVENTH DIVISION, SITTING AT NASHVILLE, TENNESSEE

FILED
1995 SEP 20 PM 3:10
CHARLENE BOWDEN-CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C. & M.

JOHN E. APPMAN, NICHOLAS TODD SUTTON, HERBERT S. MONCIER, and DAVID W. STUFFLESTREET, Petitioners	)	
VS.	)	NO. 95-1834-III
SGT. JAMES WORTHINGTON, Administrative Assistant of Internal Affairs, Morgan County Regional Correction Facility, State of Tennessee, Department of Corrections, Box 2000, Wartburg, Tennessee 37887 Defendant	)	

PETITION

Your petitioners would respectfully show unto the Court as follows:

1. That John E. Appman is a citizen and resident of Fentress County, Tennessee, and is a duly licensed Attorney, practicing law in Jamestown, Tennessee.

2. That Nicholas Todd Sutton, No. 89682, is an inmate at the main prison in Nashville, Tennessee, and that his address is presently Station A West, Nashville, Tennessee 37219-5255.

3. That Herbert S. Moncier is a citizen and resident of Knox County, Tennessee, and is a duly licensed Attorney, practicing law in Knoxville, Tennessee.

4. That David W. Stufflestreet is an inmate at the Morgan County Regional Correction Facility in Morgan County, Tennessee.

5. That the petitioner, John E. Appman, has been appointed to represent the petitioner, Nicholas Todd Sutton.

6. That the petitioner, Herbert S. Moncier, has been appointed to represent the petitioner, David W. Stufflestreet.

7. That the defendant, Sgt. James Worthington, is an employee of the State of Tennessee, Department of Corrections, at the Morgan County Regional Correction Facility, Box 2000, Wartburg, Tennessee 37887.

9/58

8. That John E. Appman on the 18th day of September, 1985, during regular business hours by phone did request under the authority of T.C.A. 10-7-503 to inspect the records of the State of Tennessee maintained by the Defendant, Sgt. James Worthington, Department of Corrections, State of Tennessee, at the Morgan County Regional Correctional Facility at Wartburg, Tennessee, for and on behalf of the State of Tennessee, in regard to the investigation of the death of Carl Estep, No. 100293, which occurred on or about January 15, 1985, at the Morgan County Regional Correction Facility.

9. That on the 18th day of September, 1985, the defendant, Sgt. James Worthington, stated to your petitioner, John E. Appman, that he would not make the records of said investigation available until he consulted with an attorney on behalf of the State in regard to the same.

10. That on the 19th day of September, 1985, at approximately 9:45 A.M. the Honorable Mike Pemberton, Assistant District Attorney General for the Ninth Judicial District, did call your petitioner, John E. Appman, and did advise him on behalf of the defendant, Sgt. James Worthington, that these records would not be made available under T.C.A. 10-7-503.

11. That the Affidavit of John E. Appman, petitioner, in support of the above is attached as Attachment 1.

12. That T.C.A. 10-7-505 provides that the Chancery Court of Davidson County shall have jurisdiction in the case of records in the custody and control of any state department, agency, or instrumentality.

WHEREFORE, the petitioners respectfully pray:

1. That they be allowed to file this petition.

2. That an Order be issued by this Honorable Court requiring the defendant, Sgt. James Worthington, to immediately appear and show cause why an Order should not be granted ordering the defendant to make available for inspection the records of the investigation of the death of Carl Estep, No. 100293, on or about January 15, 1985, to the petitioners.

3. That upon the hearing of this cause that an Order issue requiring the defendant to make available for inspection the entire record of the State of Tennessee pertaining to the investigation of the death of Carl Estep, No. 100293, on or about January 15, 1985, at the Morgan County Regional Correction Facility.

4. That the defendant, Sgt. James Worthington, pending the hearing of the Show Cause Order, be restrained from transferring or destroying any and all records of the State of Tennessee in his custody which he might have pertaining to the death of Carl Estep, No. 100293.

5. That upon the hearing of this cause that not only the defendant, Sgt. James Worthington, be ordered to allow access for the purpose of inspection to any and all records pertaining to the death of Carl Estep, No. 100293, on or about January 15, 1985, at the Morgan County Regional Correction Facility, but also ordering any and all other state employees or state officials to whom Sgt. James Worthington might have transferred said records to make the same available.

6. That the petitioners be granted such other, further and general relief to which they may be entitled.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE.

Respectfully submitted,

JOHN E. APPMAN, NICHOLAS TODD SUTTON, HERBERT S. MONCIER, and DAVID W. STUFFLESTREET

I acknowledge myself surety for cost not to exceed $500.00
John E. Appman

John E. Appman
JOHN E. APPMAN
Attorney at Law
P. O. Box 99
Jamestown, TN 38556

HERBERT S. MONCIER
ATTORNEY AT LAW
1832 PLAZA TOWER
KNOXVILLE, TENNESSEE 37929
615-546-7746

STATE OF TENNESSEE

COUNTY OF FENTRESS

John E. Appman, a citizen and resident of the State of Tennessee, County of Fentress, makes oath that the statements contained in the foregoing Petition are true to the best of his knowledge, information and belief.

John E. Appman
JOHN E. APPMAN

Sworn to and subscribed before me at Jamestown, Tennessee, this the 19 day of September, 1985.

Patricia D. Maddox
NOTARY PUBLIC

My Commisssion Expires: December 30, 1985

TO THE HONORABLE C. ALLEN HIGH, CHANCELLOR,
SEVENTH DIVISION, SITTING AT NASHVILLE, TENNESSEE

JOHN E. APPMAN, NICHOLAS TODD SUTTON, HERBERT S. MONCIER, and DAVID W. STUFFLESTREET, Petitioners	)	
VS.	)	NO. 85-1834-III
~~SGT. JAMES WORTHINGTON,~~ Administrative Assistant of Internal Affairs, Morgan County Regional Correction Facility, State of Tennessee, Department of Corrections, Box 2000, Wartburg, Tennessee 37887 Defendant	)	

FILED
1985 SEP 20 PM 3:41
CIRCUIT COURT CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C. & M.

AFFIDAVIT

STATE OF TENNESSEE)
) SS.
COUNTY OF FENTRESS)

Comes John E. Appman, a citizen and resident of Fentress County, Tennessee, who being first duly sworn, deposes and says:

1. That on the 18th day of September, 1985, the defendant, Sgt. James Worthington, stated to your petitioner, John E. Appman, that he would not make the records of said investigation available until he consulted with an attorney on behalf of the State in regard to the same.

2. That on the 19th day of September, 1985, at approximately 9:45 A.M. the Honorable Mike Pemberton, Assistant District Attorney General for the Ninth Judicial District, did call your petitioner, John E. Appman, and did advise him on behalf of the defendant, Sgt. James Worthington, that these records would not be made available under T.C.A. 10-7-503.

Further affiant saith not.

John E. Appman
JOHN E. APPMAN

Sworn to and subscribed before me this 19th day of September, 1985.

Patricia D. Maddox
NOTARY PUBLIC

My Commission Expires: December 30, 1985

RECEIVED 7-8-1985
BY
DAVIDSON COUNTY
CHANCERY COURT

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, AT NASHVILLE, PART III

JOHN E. APPMAN, NICHOLAS TODD SUTTON, HERBERT S. MONCIER, and DAVID W. STUFFLESTREET, Petitioners, vs. SERGEANT JAMES WORTHINGTON, Administrative Assistant for Internal Affairs, Morgan County Regional Correctional Facility, Respondent.	)	NO. 85-1834-III

BRIEF OF PETITIONERS

Come now Petitioners, John E. Appman, Nicholas Todd Sutton, Herbert S. Moncier, and David W. Stufflestreet, and submit the following brief and memorandum of authorities for this Court's consideration in ruling whether Petitioners should be allowed inspection of any and all records pertaining to the death and investigation into the death of Carl Estep, No. 100293, at the Morgan County Regional Correctional Facility that occurred on or about January 15, 1985.

STATEMENT OF FACTS

Petitioners in this action have filed suit in their individual names and capacities against Sergeant James Worthington, Administrative Assistant for Internal Affairs at the Morgan County Regional Correctional Facility requesting the right of personal inspection of any and all records pertaining to the death and investigation into the death of inmate Carl Estep, No. 100293, at the Morgan County Regional Correctional Facility that occurred on or about January 15, 1985. The petition was properly filed pursuant to Section 10-7-505 of the Tennessee Code Annotated which sets forth procedures for obtaining access and the right of personal inspection of any state, county, or municipal records as provided in Section 10-7-503.

It is undisputed that Respondent, Sergeant James Worthington, is the Administrative Assistant for Internal Affairs at the Morgan County Regional Correctional Facility where the death of inmate Carl Estep occurred on or about January 15, 1985. Likewise, it is undisputed that Sergeant James Worthington has compiled and collected various records pertaining to the death of inmate Carl Estep and has compiled and collected other numerous records of the Department of Corrections. These records had been the subject of a subpoena duces tecum issued to Respondent compelling his attendance at a hearing scheduled on September 23, 1985, in the Criminal Court for Morgan County, Tennessee. The State moved to quash the subpoena duces tecum issued, and the Trial Judge for the Criminal Court for Morgan County, Tennessee, has deferred ruling on the matter pending a determination by this Court whether Respondent has shown by preponderance of the evidence justification for nondisclosure of the records sought. Accordingly, there has been no previous judicial ruling whether these Petitioners are entitled to compel Respondent to produce for inspection the records sought. This Court has jurisdiction and is the appropriate forum for ruling upon the request of these Petitioners, all citizens of Tennessee, for the right of personal inspection of any and all records pertaining to the death and investigation into the death of inmate Carl Estep at the Morgan County Regional Correctional Facility that occurred on or about January 15, 1985.

ARGUMENT

Section 10-7-503 of the Tennessee Code Annotated provides in pertinent part as follows:

> All state, county, and municipal records and all records maintained by the Tennessee Performing Arts Center Management Corporation shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state statutes.

Most recently in Memphis Publishing Co. d/b/a The Commercial Appeal v. Holt, Shelby County (Tenn. Ct. App. August 15, 1985),

the Tennessee Court of Appeals reaffirmed that the legislature, in the enactment of Section 10-7-503 of the Tennessee Code Annotated meant exactly what it said in that "all records maintained by the State of Tennessee or any county or municipality of Tennessee are open to inspection unless exempted by the Legislature." Id. at 2. See also Board of Education v. Memphis Publishing Co., 585 S.W.2d 629 (Tenn. Ct. App. 1979). In Memphis Publishing Co. d/b/a The Commercial Appeal v. Holt, personal inspection was sought of investigative police records. Regarding the threshold question whether the investigative police records constituted "records" within the meaning of Section 10-7-503, the Tennessee Court of Appeals concluded, "We would be hard put indeed to say the city police files were not municipal records. If they are not, we would have no idea of what else they could be." Id. at 2.

In this case, no contention has been made that the records sought by Petitioners are not "records" within the meaning of Section 10-7-503. Indeed, counsel for Respondent in his brief tacitly concedes this threshold question and focuses solely upon whether the requested documents are excepted from Tennesseee's Public Records Act.

The confidential records portion of the Public Records Act, Section 10-7-504, certainly does not specifically exclude the records sought in this case. Absent some explicit legislative exception, the records in question are public records and open for examination by citizens of Tennessee such as Petitioners. Moreover, even if certain inmate statements were made to Respondent and a Criminal Investigator from the office of the District Attorney General, these records would not be protected from disclosure by Sections 40-32-101(b) or (c)(1). That issue was specifically addressed in Memphis Publishing Co. d/b/a The Commercial Appeal v. Holt, wherein the Tennessee Court of Appeals held, "By the very wording of the mentioned code sections, it is applicable in expunction matters only." Id. at 6. In addition, it should not be overlooked that Section 40-32-101(b) specifies that "for purposes of expunction only"

public records are defined not to include certain documents. Last, the Legislature has expressed its intent in Section 10-7-504(d)(1)(E) to leave subject to public inspection and copying records and other materials in the possession of other departments even though copies of the same records and other materials which may also be in the possession of the Attorney General's office are not subject to inspection or copying in the office of Attorney General.

Regarding Respondent's possession of any statements made to an Agent of the Tennessee Bureau of Investigation, these records also are not protected from disclosure. Section 10-7-504 (a) provides, inter alia, that information contained in investigative records of the Tennessee Bureau of Investigation shall be disclosed to the public and open to inspection "in compliance with a subpoena." In this case a subpoena duces tecum returnable to the Criminal Court for Morgan County, Tennessee has been properly issued. Furthermore, the legislative intent in enacting the Public Records Act would be entirely frustrated if otherwise public records could be excepted by the simple expedient of having them prepared or compiled by the Tennessee Bureau of Investigation. Consequently, Petitioners submit that such records should not be shielded from disclosure by the confidential record statute, Section 10-7-504, and that this Court should honor Petitioners' request for personal inspection of these records.

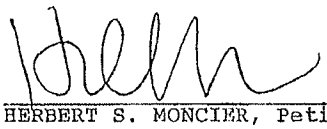
Another crucial aspect in this case involves the recent amendments to Section 10-7-503. In Memphis Publishing Co. d/b/a The Commercial Appeal v. Holt, the Tennessee Court of Appeals was careful to emphasize and quote the existing language in Section 10-7-503 at the time the Chancellor in that case ruled. That language was changed by the legislature in 1984, and the changes became effective July 1, 1985, prior to the filing of the instant litigation.

Specifically, Public Chapter 929, § 1 substituted "state statute" for "law or regulation made pursuant thereto" at the end of the first sentence in Section 10-7-503. See

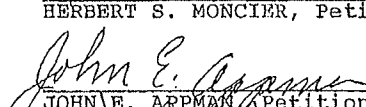
Compiler's Notes, Tenn. Code Ann. § 10-7-503 (Supp. 1984). This amendment to Section 10-7-503 was made subsequent to the effective date of the Tennessee Rules of Criminal Procedure, in particular Rule 16. The Tennessee Rules of Criminal Procedure were promulgated and prescribed by the Supreme Court of Tennessee, not the state legislature. These rules became effective upon approval by joint resolution of both houses of the General Assembly. See Tenn. Code Ann. § 16-3-404. While these rules may have the force of law, they are not a "state statute" for purposes of Section 10-7-503. To conclude otherwise renders the recent amendments to Section 10-7-503 a nullity since the legislature specifically substituted the phrase "state statute" for "law or regulation." Petitioners submit that the legislature was well aware of Rule 16 of the Tennesee Rules of Criminal Procedure at the time it enacted the amendments to the Public Records Act. By the amendment, which now provides "unless otherwise provided by state statutes," the legislature could only have intended to narrow the available exceptions to the Public Records Act and to further restrict those records that enjoy protection from disclosure. This interpretation is consistent with due process and equal protection principles, ensures that citizens of this State, merely because of their status as defendants or attorneys, are not denied the right of equal access to public records afforded to other citizens and the press of this State, and permits citizens who are attorneys and who have been called upon to perform a public duty to fulfill their duties. Furthermore, this interpretation does not contravene any prior decisions by courts of this State because the amendments being discussed and applicable to this case only became effective July 1, 1985.

WHEREFORE, for all the foregoing reasons, Petitioners request that this Court issue an order requiring Respondent to allow inspection of any and all records pertaining to the death and investigation into the death of inmate Carl Estep at the Morgan County Regional Correctional Facility that occurred on or about January 15, 1985.

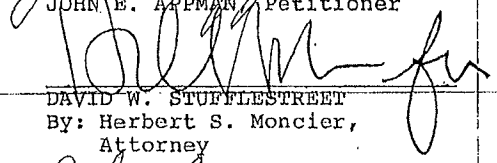
Respectfully submitted this 27 day of September, 1985.



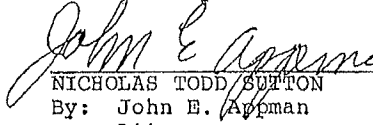
HERBERT S. MONCIER, Petitioner



JOHN E. APPMAN, Petitioner



DAVID W. STUFFLESTREET
By: Herbert S. Moncier,
Attorney



NICHOLAS TODD SUTTON
By: John E. Appman
Attorney

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Knoxville, Tennessee 37929
(615) 546-7746

John E. Appman
P.O. Box 99
Jamestown, Tennessee 38556
(615) 879-7619

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served upon the Attorney General for the State of Tennessee, 450 James Robertson Parkway, Nashville, Tennessee, 37219, counsel for Respondent, Sergeant James Worthington, this the 27 day of September, 1985.

HERBERT S. MONCIER

000012

FILED

1985 SEP 20 PM 3:13

CHRISTINA NORRIS-CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C. & M.

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE

20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

John R. Oppman et al)
)
V.) NO. 85-1834-III
Sgt. Jas. Worthington)
)

NOTICE OF DISPOSITION DATE

The disposition date of this case is twelve months from date of filing. The case must be either disposed of or set for trial by this date or it will be dismissed by the Court for failure to prosecute pursuant to T.R.C.P. 41.02 and Local Rule 37.

If you think the case will require more than one year to resolve or set for trial, you must send a letter to the Clerk and Master at the earliest practicable date asking for an extension of the disposition date and stating your reasons. Extensions will be granted only when exceptional circumstances exist.

CHRISTINA NORRIS, Clerk & Master
7 Metro Courthouse
Nashville, TN 37201
(615) 259-5526

By: _____
Deputy Clerk & Master

cc: counsel for plaintiff(s)
defendant(s)

RECEIVED 9-25-85
DAVIDSON COUNTY
CHANCERY COURT

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE

TWENTIETH JUDICIAL DISTRICT, AT NASHVILLE, PART III

JOHN E. APPMAN, NICHOLAS TODD SUTTON, HERBERT S. MONCIER, and DAVID W. STUFFLESTREET, Petitioners,	)	
vs.	)	NO. 85-1834-III
SERGEANT JAMES WORTHINGTON, Administrative Assistant for Internal Affairs, Morgan County Regional Correctional Facility, Respondent.	)	

BRIEF OF RESPONDENT ON SHOW CAUSE HEARING

Preliminary Statement

On January 15, 1985, inmate Carl Estep, #100293, was killed by fellow inmates at Morgan County Regional Facility. The Grand Jury for Morgan County returned an indictment against fellow inmates Thomas Street, #71780; Nicholas Todd Sutton, #89682; and Charles Arnold Freeman, #103839 for murder in the first degree. Inmate David W. Stufflestreet was charged as an accessory after the fact. Trial is set for October 29, 1985, in the Criminal Court for Morgan County, Tennessee.

Sergeant James Worthington, Administrative Assistant for Internal Affairs at Morgan County Regional Facility, commenced investigation of the death of inmate Estep on January 15, 1985. From that date, he has been assisted by Criminal Investigator Clarence Robbins from the office of the District Attorney in securing various statements from inmate witnesses. Subsequently, Sergeant Worthington was also assisted by T.B.I. Agent Jim Glover in obtaining an inmate witness statement. In addition,

Sergeant Worthington on his own took statements from officers and employees of Morgan County Regional Facility and from the mother and wife of the victim. Sergeant Worthington has made evaluative summaries for Warden Otie Jones of Morgan County Regional Facility.

Petitioners in the instant case, who are defense counsel and defendants in the criminal case, made discovery requests and a subpoena duces tecum in the Morgan County Criminal Court, seeking to obtain all records in the possession of Sergeant Worthington regarding the killing of Estep. At a hearing held before the Honorable Eugene Eblen, Judge of the Morgan County Criminal Court, on September 23, 1985, the subpoena duces tecum was denied and the discovery requests were, on information, granted in part and denied in part.

Three days prior to that hearing, defense counsel (Appman and Moncier) and the criminal defendants (Sutton and Stufflestreet) filed in this Court a petition for access to the records possessed by Sergeant Worthington pursuant to T.C.A. §10-7-505(a). On that same date, September 20, 1985, this Court ordered Sergeant Worthington to appear at a hearing on September 27, 1985, at 11:00 a.m. to show cause why he should not be ordered "to allow inspection of any and all records pertaining to the death and investigation into the death of Carl Estep, No. 100293, at the Morgan County Regional Correctional Facility which occurred on or about January 15, 1985." Counsel for respondent, having just obtained a copy of the petition on September 23, 1985, and having just received on September 25, 1985, a summary of the records in defendant's possession, tenders this brief for the Court's consideration.

Argument

I. THE REQUESTED DOCUMENTS ARE EXCEPTED FROM THE PUBLIC RECORDS ACT BY THE PROVISIONS OF RULE 16 OF THE TENNESSEE RULES OF CRIMINAL PROCEDURE.

Respondent respectfully submits that the Public Records Act, T.C.A. §10-7-503 must be read in pari materia with Rule 16, Tenn. R. Crim. P. The Public Records Act was originally enacted in 1957. The Rules of Criminal Procedure have had the force of law since they became effective on July 13, 1978, pursuant to the governor's approval of the legislature's joint resolution adopting the rules. Tenn. R. Crim. P. 59. See Tennessee Department of Human Services v. Vaughn, 595 S.W.2d 62 (Tenn. 1980) (rules have the force of law).

Subsection (a)(2) of Rule 16 provides as follows:

> Information Not Subject to Disclosure. Except as provided in paragraphs (A), (B), and (D) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal State documents made by the district attorney general or other State agents or law enforcement officers in connection with the investigation or prosecution of the case, or of statements made by State Witnesses or prospective State Witnesses.

It is a basic canon of statutory construction that the legislature must not have intended a nullity when it passed a statute. If this subsection of Rule 16 did not create an exception to the Public Records Act, then it would be a nullity. Any defendant, or defense lawyer, who was unable to obtain the desired documents in criminal court by reason of subsection (a)(2) could obtain the very same documents by resort to the Public Records Act.

The proposition that Rule 16 creates an exception to T.C.A. §10-7-503 has been accepted by the Court of Appeals in a recent case.

> We agree that when read in pari materia with T.C.A. §10-7-503 an exception is created; but such exception is created in matters of discovery in the trial of a criminal case. There were no criminal proceedings pending when plaintiff requested access to the records in question. The rule regarding criminal trial procedure had no more application to that request than it would have if plaintiff went to the public library to request to read a current novel.

Memphis Publishing Co. d/b/a The Commercial Appeal, et al v. John D. Holt, et al, Shelby County (Tenn. App., Jackson, Aug. 15, 1985) (opinion by Nearn, J., separately concurred in by Crawford, J.) (copy attached).

In Memphis Publishing Co., there was no criminal action pending in connection with the investigative records. Id., at 1. By contrast, in the instant case, there is a criminal prosecution pending. The court with jurisdiction of that prosecution has already ruled adversely to petitioners in the instant case insofar as Rule 16 is concerned. Therefore, the show cause order should be discharged, and the petition dismissed.

II. IN THE ALTERNATIVE, THE REQUESTED RECORDS CONCERNING THE DEATH OF AN INMATE ARE CONFIDENTIAL IN THE DISCRETION OF THE COMMISSIONER OF THE DEPARTMENT OF CORRECTION.

As to inmate records, the legislature has made the following provision:

> Records of inmates--Report of changes.--The commissioner vested with the administration of the respective institutions shall keep in his own office, accessible only to his secretary, and proper clerks, except by his consent, or the orders of the judge of a court of record, a record showing the name, residence, sex, age, nativity, occupation, condition, and date of entrance or commitment of every inmate, patient, or pupil in the several institutions governed by it, the date, cause, and terms of discharge, and the conditions of such person at the time of leaving, and also all transfers from one institution to another, and, if dead, the date and cause. These and such other facts as the commissioner may, from time

> to time, require shall be furnished by the managing officer of each institution, within ten (10) days after the commitment, entrance, death, or discharge of an inmate, patient, or pupil; and the managing officer shall make a special report within twenty-four (24) hours thereafter, giving the circumstances as fully as possible.

T.C.A. §4-6-140. The original version of this statute was adopted in 1919, prior to the adoption of the Public Records Act. However, the Court of Appeals has previously held that the provision regarding inmate records was not repealed by implication by the Public Records Act. C. Murray Henderson, et al v. WSM, Inc., et al, Davidson County (Tenn. App., Nashville, Nov. 15, 1978), at 6 (copy attached). The court further pointed out that there is no irreconcilable conflict between the Public Records Act and the provision regarding confidentiality of inmate records. Id., at 7. Finally, the court looked to the legislative history and found that it supported the court's conclusion. Id., at 9-10.

Since the records at issue in the present case concern an inmate formerly in the custody of the Department of Correction, and the circumstances of his death, the records are protected from disclosure except by consent of the commissioner, or the order of the judge of a court of record. Respondent submits that this Court should not order disclosure of the requested information because a court of equal stature has already ruled, in connection with the pending criminal proceeding, that the criminal defendants are not entitled to this information.

Furthermore, if this Court were to order disclosure of the requested information prior to trial, the lives of the inmate witnesses may very well be placed in danger. Aside from the implications in this particular case, respondent also submits that disclosure would make it extremely difficult in future for law enforcement officials to

prosecute crimes committed among inmates at the State's penal institutions. See United States ex rel. Jackson v. Petrilli, 63 F.R.D. 152, 153 (N.D. Ill. 1974) (plaintiff inmate not entitled to statements of inmate witnesses given in on-going murder investigation). See also, Friedman v. Bache Halsey Stuart Shields, Inc., 738 F.2d 1336, 1341-43 (D.C. Cir. 1984) (recognizing qualified privilege for records of on-going law enforcement investigation, reversing and remanding denial of subpoenas to federal agencies on ground that privilege had not been sufficiently made out below); Jennings v. Johnson, 480 F.Supp. 47, 48 (E.D. Tenn. 1979) (granting Attorney General's motion for protective order to prevent discovery of reports and notes of T.B.I. agent on homicide which was the subject of that action).

III. IN THE ALTERNATIVE, CERTAIN RECORDS ARE PROTECTED FROM DISCLOSURE BECAUSE THEY ARE INVESTIGATIVE REPORTS MAINTAINED BY THE DISTRICT ATTORNEY AS CONFIDENTIAL RECORDS FOR LAW ENFORCEMENT PURPOSES.

Respondent Worthington possesses certain statements from inmates which were made to Worthington and Criminal Investigator Clarence Robbins from the office of the District Attorney General. Respondent respectfully submits that these statements are protected from disclosure pursuant to T.C.A. §40-32-101(b) and (c)(1).

Respondent recognizes that in Memphis Publishing Co. the Court of Appeals found that the confidentiality established by this statute "is applicable in expunction matters only." Id., at 6 and n. 1. Respondent respectfully submits that although the statute specifically deals with expunction, it contains a legislative recognition of certain records "that are maintained as confidential records for law-enforcement purposes and are not opened for inspection by members of the public." Respondent submits this interpretation is buttressed by the provision in subsection (c)(1)

that "[r]elease of such confidential records or information contained therein other than to law-enforcement agencies for law-enforcement purposes shall be a misdemeanor." Therefore, those records in the possession of Sergeant Worthington consisting of "investigative reports, intelligence information of law-enforcement agencies, or files of district attorneys general that are maintained as confidential records for law-enforcement purposes" are protected from disclosure. T.C.A. §40-32-101(b).

IV. STATEMENTS WHICH WERE MADE TO T.B.I. AGENT JIM GLOVER ARE PROTECTED FROM DISCLOSURE.

Sergeant Worthington possesses four inmate witness statements which were made to T.B.I. Agent Jim Glover.

> Additionally, all investigative records of the Tennessee bureau of investigation shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record, however, such investigative records of the Tennessee bureau of investigation shall be open to inspection by elected members of the General Assembly . . . .

T.C.A. §10-7-504(a). The statements given to T.B.I. Agent Jim Glover are protected from disclosure by this statute, and this Court should not order disclosure of these statements for the same reasons given above.

V. THE RECORDS ARE PROTECTED FROM DISCLOSURE BY PRIVILEGE ARISING FROM AN ON-GOING LAW ENFORCEMENT INVESTIGATION.

The cases cited in support of the argument under Section II above, to the effect that the Court should not order disclosure of inmate records pursuant to T.C.A. §4-6-140, recognize the existence of a privilege against disclosure of reports made in the course of an on-going cri-

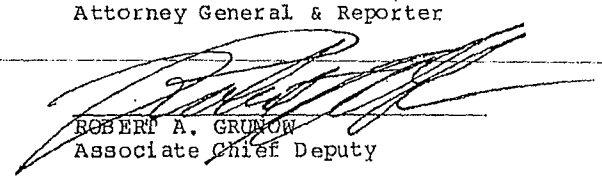
minal investigation. On the rationale of those cases, respondent submits that the records sought by petitioners in the instant case are privileged from disclosure at this time.

Conclusion

For the reasons stated above, respondent submits that the show cause order should be discharged and the petition denied.

Respectfully submitted,

W. J. MICHAEL CODY
Attorney General & Reporter

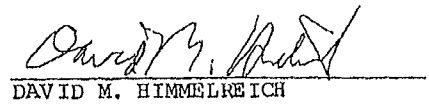


ROBERT A. GRUNOW
Associate Chief Deputy

DAVID M. HIMMELREICH
Assistant Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37219
(615) 741-2865

CERTIFICATE OF SERVICE

I hereby certify that true and exact copies of the foregoing have been forwarded by first-class mail, postage prepaid, to Mr. John E. Appman, P. O. Box 99, Jamestown, TN 38556 and Mr. Herbert S. Moncier, 1832 Plaza Tower, Knoxville, TN 37929 on this the 25th day of September, 1985.



DAVID M. HIMMELREICH
Assistant Attorney General

RECEIVED 9-30-85
DAVIDSON COUNTY
CHANCERY COURT

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE
PART III

JOHN E. APPMAN, NICHOLAS TODD SUTTON, HERBERT S. MONCIER, and DAVID W. STUFFLESTREET,	)	
Petitioners,	)	
v.	)	NO. 85-1834-III
SERGEANT JAMES WORTHINGTON, ADMINISTRATIVE ASSISTANT FOR INTERNAL AFFAIRS, MORGAN COUNTY REGIONAL CORRECTIONAL FACILITY,	)	ORDER FILED & ENTERED 10-4-85 MINUTE BOOK 34 PAGE 387
Respondent.	)	

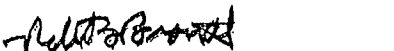
FINAL JUDGMENT ON PETITION

This cause came on to be heard on September 27, 1985 upon the petition for inspection of public records pursuant to T.C.A. § 10-7-505(a), the brief of respondent, the brief of petitioners, stipulated collective exhibit number 1, and the statements and argument of counsel, from all of which the Court finds that the petition should be denied because Rule 16 of the Tennessee Rules of Criminal Procedure creates an exception, in the case of an on-going criminal prosecution, to T.C.A. § 10-7-504, and that this exception is applicable to the matters requested in this petition. The Court further finds that the amendment of T.C.A. § 10-7-503 by 1984 Tenn. Pub. Acts ch. 929, effective July 1, 1985, did not eliminate the exception by virtue of Rule 16. The legislative intend in amending the statute appears to have been to prevent the creation of additional exceptions to the statute by means of rules promulgated by agencies of the executive branch pursuant to the Uniform Administrative Procedures Act. The Court finds that it was not the legislative intent to affect court rules, such as the Rules of Criminal Procedure, which were promulgated by the Supreme Court, approved by a majority vote of the General Assembly, and approved by the Governor.

The Court's findings of fact and conclusions of law upon the petition, as stated from the bench at the hearing held in this matter, are hereby incorporated by reference.

It is therefore ORDERED, ADJUDGED, and DECREED, as a final judgment upon the petition pursuant to T.C.A. § 10-7-505(b), that the petition is hereby denied.

ENTER this _____ day of _____, 1985.



ROBERT S. BRANDT, Chancellor

APPROVED FOR ENTRY:

DAVID M. HIMMELREICH
Assistant Attorney General
Attorney for Respondent Worthington
450 James Robertson Parkway
Nashville, TN 37219-5025
(615) 741-2865

cc: John E. Appman
P.O. Box 99
Jamestown, TN 38556

Herbert S. Moncier
1832 Plaza Tower
Knoxville, TN 37929

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE
PART III

JOHN E. APPMAN, et al Petitioners	)	
VS.	)	NO. 85-1834-III
SERGEANT JAMES WORTHINGTON ADMINISTRATIVE ASSISTANT FOR INTERNAL AFFAIRS, MORGAN COUNTY REGIONAL CORRECTIONAL FACILITY, Respondent	)	

FILED
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CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C.

NOTICE OF APPEAL

Notice is hereby given that the Petitioners, John E. Appman and Herbert S. Moncier, do hereby except from the Order of the Chancery Court for the State of Tennessee, Twentieth Judicial District at Nashville, in this action and appeal said Order to the next term of the Court of Appeals, sitting at Nashville. This 28 day of Oct, 1985.

John E. Appman
JOHN E. APPMAN

Herbert S. Moncier by JEA
HERBERT S. MONCIER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this Notice of Appeal has been served upon David M. Himmelreich, Assistant Attorney General, Attorney for Respondent Worthington, 450 James Robertson Parkway, Nashville, TN 37219-5025 by delivering a true an exact copy of said Notice of Appeal to the office of said counsel or by placing a true and exact copy of said pleading in the United States Mail addressed to said counsel at his office with sufficient postage thereupon to carry the same to its destination.

This the 28 day of Oct, 1985.

John E. Appman

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE
PART III

JOHN E. APPMAN, ET AL Petitioners	)	
VS.	)	NO. 85-1834-III
SERGEANT JAMES WORTHINGTON ADMINISTRATIVE ASSISTANT FOR INTERNAL AFFAIRS, MORGAN COUNTY REGIONAL CORRECTIONAL FACILITY, Respondent	)	

NOTICE

Notice is hereby given that on the 27th day of January, 1986 the transcript of the above styled cause was filed with the Clerk and Master.

This the 27 day of January, 1986.

John E. Appman
JOHN E. APPMAN

Herbert S. Moncier by
HERBERT S. MONCIER
John L. Thod, attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this Notice has been served upon David M. Himmelreich, Assistant Attorney General, Attorney for Respondent Worthington, 450 James Robertson Parkway, Nashville, TN. 37219-5025 by delivering a true an exact copy of said Notice to the office of said counsel or by placing a true and exact copy of said pleading in the United States Mail addressed to said counsel at his office with sufficient postage thereupon to carry the same to its destination.

This the 27 day of January, 1986.

John E. Appman

10-9-85

IN THE CRIMINAL COURT FOR MORGAN COUNTY, TENNESSEE

JOHN E. APPMAN, NICHOLAS TODD SUTTON, HERBERT S. MONCIER, and DAVID W. STUFFLESTREET,	)	NOT ENTERED
Petitioners,	)	
v.	)	NO. 85-1834-III
SERGEANT JAMES WORTHINGTON, ADMINISTRATIGVE ASSISTANT FOR INTERNAL AFFAIRS, MORGAN COUNTY REGIONAL ~~CORRECTIONAL FACILITY,~~	)	
Respondent.	)	

JUDGMENT

This cause came on to be heard on September 27, 1985, upon the petition for inspection of public records pursuant to T.C.A. § 10-7-505(a), the brief of respondent, the brief of petitioners, stipulated collective exhibit number 1, and the statements and argument of counsel, from all of which the Court finds that the petition should be denied because Rule 16 of the Tennessee Rules of Criminal Procedure creates an exception, in the case of an ongoing criminal prosecution, to T.C.A. § 10-7-504, and that this exception is applicable to the matters requested in this petition. At the conclusion of the hearing, the Court stated its opinion from the bench which was reduced to writing by the court reporter and constitutes the Memorandum Opinion and Finding of Fact of the Court and is to be incorporated into this final judgment as though recited verbatim herein and made part of this judgment by reference and for the reasons stated, it is

ORDERED, ADJUDGED, AND DECREED, as a final judgment that the petition by and the same is hereby denied.

ENTER this the ____ day of October, 1985.

ROBERT S. BRANDT, Chancellor

APPROVED FOR ENTRY:

HERBERT S. MONCIER, Individually
and as Attorney for David W. Stufflestreet

JOHN E. APPMAN, Individually
and as Attorney for Nicholas Todd Sutton

DAVID M. HEMERLICK
Assistant Attorney General and
Attorney for Respondent

STUFFLESTREET/JUDGMENT:P8

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
March 11, 2014 Session

EDDIE R. GATES v. ANDREW S. PERRY, ET AL.

Appeal from the Circuit Court for Bradley County
No. V11571 J. Michael Sharp, Judge

No. E2013-01992-COA-R9-CV-FILED-MARCH 26, 2014

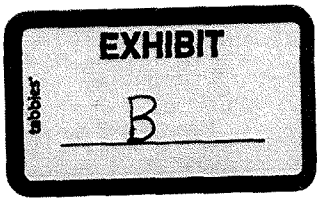
This interlocutory appeal concerns the issue of whether the requirement of obtaining new process or recommencing an action in general sessions court is triggered for purposes of Tenn. Code Ann. § 16-15-710 by the failure to return unserved the prior process within 60 days as required by Tenn. Code Ann. § 16-15-902. Eddie R. Gates ("Gates"), alleging damages sustained in an automobile accident, sued Andrew S. Perry ("Perry") in the General Sessions Court for Bradley County ("the General Sessions Court"). Gates' suit was dismissed. On Gates' appeal to the Circuit Court for Bradley County ("the Circuit Court"), Perry moved to dismiss, again alleging that the statute of limitations had run during the long gap between issuance and reissuance of process in the General Sessions Court action. The Circuit Court denied Perry's motion, holding that the time bar did not operate because process was not returned unserved and, therefore, the statute of limitations never ran. We granted permission for this interlocutory appeal. We reverse the Circuit Court.

Tenn. R. App. P. 9 Interlocutory Appeal by Permission; Judgment of the Circuit Court Reversed; Case Remanded

D. MICHAEL SWINEY, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY and THOMAS R. FRIERSON, II, JJ., joined.

F. R. (Rick) Evans, Chattanooga, Tennessee, for the appellant, Andrew S. Perry.

Jimmy W. Bilbo and Brent J. McIntosh, Cleveland, Tennessee, for the appellee, Eddie R. Gates.



OPINION

Background

The parties agree on the relevant facts in this case. In February 2006, Gates sued Perry[1] in the General Sessions Court. Gates alleged damages resulting from personal injuries he sustained in a July 2005 automobile accident in Cleveland, Tennessee. Alias civil complaints/warrants were filed timely on the following dates: April 11, 2006; August 16, 2006; January 11, 2007; March 16, 2007; and, June 6, 2007. On January 2, 2008, an Order of Publication was entered and published timely in The Daily Post – Athenian on January 18, January 25, February 1, and, February 8, 2008. Another alias civil complaint/warrant was filed timely on January 4, 2008. This January 4, 2008 alias civil complaint/warrant never was returned. The final alias civil complaint/warrant was filed some 18 months later on July 13, 2009, and was served on July 17, 2009.

In March 2011, Perry filed a motion to dismiss in the General Sessions Court. Perry argued that the action was time barred by the applicable statute of limitations. The General Sessions Court granted Perry's motion to dismiss, finding that Gates had failed to apply for and obtain new process or recommence the action in the 18 month gap and that the statute of limitations had run.

Gates appealed to the Circuit Court. Perry filed a motion to dismiss. Gates filed a response, arguing that since the January 4, 2008 process never was returned, the requirements of the statute never were "triggered" and the time bar did not operate against him. Agreeing with Gates' position, the Circuit Court denied Perry's motion to dismiss. Perry then filed a second motion to dismiss, citing Tenn. Code Ann. § 16-15-902 and its requirement that process be served within 60 days of issuance. Gates again filed a response in opposition.

The Circuit Court entered an order denying Perry's second motion to dismiss, finding and holding, in part:

> In this case, the civil warrant was returned unserved several times with each return unserved being filed and the new process issued within nine (9) months from the previous return unserved, which is required by Tennessee law. The court finds that the process reissued on January 4, 2008 was outstanding at the time that new process was issued on July 13, 2009. The court finds that the process reissued on July 13, 2009 was served upon both defendants and the

---

[1]Krystal Elmore, also named as a defendant, has filed no brief in this appeal.

return was filed on July 17, 2009. Based upon this court's interpretation of T.C.A § 16-15-710, the time bar as set out in the statute is not applicable in this case. T.C.A. § 16-15-710 imposes two distinct time requirements for re-filing and/or renewal. The later requirement is that an action must be recommenced within one (1) year after the return of the initial process not served. The remaining time requirement applicable to the case at bar governs those actions in which process has been re-issued. In the case before the court, the plaintiff was required to apply for and obtain new process within nine (9) months from return unserved of the previous one. The court finds in this case that the plaintiff requested and obtained new process on January 4, 2008. The court finds a "return unserved" had not been filed on the January 4, 2008 civil warrant at the time that process was re-issued on July 13, 2009. Therefore, the triggering event starting the clock ticking on the applicable statute of limitations had not yet occurred. The court finds the triggering event to be the filing of the return unserved. Therefore, the time bar imposed by T.C.A. § 16-15-710 does not operate against the plaintiff's cause of action as the defendant contends. Furthermore, this court has already made it's ruling concerning most of these issues as set out in it's prior order, and wishes to reiterate the findings of it's prior order and incorporate the same herein.

Ultimately, the court finds that this plaintiff did not sit idly by in an attempt to avoid the consequences of the running of the statute of limitations. The court finds that the plaintiff caused service to be timely reissued as provided for under the applicable law and rules. The court finds that under the plain reading of the applicable statutes and rules, and for the reasons set out above, that the defendant Perry's second motion to dismiss is respectfully denied. This is a final order.

The Circuit Court granted Perry's motion for interlocutory appeal. We subsequently granted permission to appeal pursuant to Tenn. R. App. P. 9.

Discussion

We granted the application for interlocutory appeal in this case to address the following issue: whether and to what extent the requirement of obtaining new process or recommencing the action in General Sessions Court was triggered for purposes of Tenn. Code Ann. § 16-15-710 by the failure to return unserved within 60 days, as required by Tenn. Code Ann. § 16-15-902, the Alias Civil Warrant issued by the General Sessions Court on January 4, 2008.

> any person designated by this section or by statute, service on the defendant is complete. If not, service by mail may be attempted or any other methods authorized by this section or by statute may be used.

Tenn. Code Ann. § 16-15-902 (2009).

Perry argues that Gates had nine months from the deadline for the service of the January 4, 2008 process–or nine months from March 4, 2008–to obtain issuance of new process. According to Perry, as this failed to occur, the statute of limitations on Gates' personal injuries claim expired as process was not issued again until July 13, 2009. Gates, on the other hand, argues that there was no need to obtain new process to freeze the statute of limitations because the January 4, 2008 process never was returned unserved. Gates contends that this lack of a return meant that the nine month period under Tenn. Code Ann. § 16-15-710 never was triggered. To decide this issue, we must construe the applicable statutes.

This Court discussed our primary goal in matters involving statutory construction in State ex rel. Irwin v. Mabalot, No. M2004-00614-COA-R3-CV, 2005 WL 3416293 (Tenn. Ct. App. Dec. 13, 2005), no appl. perm. appeal filed. We stated:

> The primary rule of statutory construction is "to ascertain and give effect to the intention and purpose of the legislature." LensCrafters, Inc. v. Sundquist, 33 S.W.3d 772, 777 (Tenn. 2000). Courts must do so without unduly restricting or expanding a statute beyond its intended scope. In re C.K.G., C.A.G., & C.L.C., 173 S.W.3d 714, 721-22 (Tenn. 2005). To determine legislative intent, one must look to the natural and ordinary meaning of the language used in the statute itself. We must examine any provision within the context of the entire statute and in light of its over-arching purpose and the goals it serves. State v. Flemming, 19 S.W.3d 195, 197 (Tenn. 2000); Cohen v. Cohen, 937 S.W.2d 823, 828 (Tenn. 1996); T.R. Mills Contractors, Inc. v. WRH Enterprises, LLC, 93 S.W.3d 861, 867 (Tenn. Ct. App. 2002). The statute should be read "without any forced or subtle construction which would extend or limit its meaning." National Gas Distributors, Inc. v. State, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes relating to the same subject matter or having a common purpose are to be construed together. In re C.K.G., C.A.G., & C.L.G., 173 S.W.3d at 722.
>
> As our Supreme Court has said, "[w]e must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning." Scott v. Ashland Healthcare Center, Inc., 49

STATE v. DRAKE

> A plaintiff who wishes to rely on the original commencement of an action to toll the running of the statute of limitations must either have process reissued within nine months after the previous process was returned unserved, which in this case would have been August 19, 2005, or must recommence the action within one year after the return of the initial process not served, which in this case would have been September 28, 2005. Plaintiff did not comply with either deadline. She insists, however, that taking a voluntary non-suit is somehow equivalent to recommencing the action, and that the savings statute should thereafter control.
>
> The cases construing Tenn. Code Ann. § 16-15-710 are Dieudonne v. Metropolitan Gov't of Nashville, 2006 WL 842915 (Tenn. Ct. App. Mar. 30, 2006) and Carlton v. Davis, 2003 WL 1923825 (Tenn. Ct. App. Apr. 24, 2003), and neither deals with the precise factual situation herein. These cases are clear in their holdings, however, that a plaintiff who fails to comply with the requirements of Tenn. Code Ann. § 16-15-710 is subject to having his/her case dismissed pursuant to the statute of limitations bar.
>
> ***
>
> In this case, plaintiff failed to comply with Tenn. Code Ann. § 16-15-710 by either having process reissued within nine months or recommencing the action within one year, and since neither occurred, plaintiff could not rely on the original filing of the action to toll the statute of limitations. Thus, plaintiff's Circuit Court action cannot be deemed to have been "commenced within the time limited by a rule or statute of limitation", and the savings statute is inapplicable.

Davis v. Mirts, No. E2006-01722-COA-R3-CV, 2007 WL 1159418, at **2-3 (Tenn. Ct. App. Apr. 19, 2007), no appl. perm. appeal filed.

We cannot accept the argument that our General Assembly intended to penalize a plaintiff who acts and reward a plaintiff who does nothing as concerns the return of unserved process. Rather, Tenn. Code Ann. § 16-15-710 must be read in connection with Tenn. Code Ann. § 16-15-902. Tenn. Code Ann. § 16-15-902 requires that process be served within 60 days of issuance. We hold that under these statutes, if an unserved process is not returned unserved within 60 days of issuance, a plaintiff in general sessions court who wishes to rely on the original commencement as a bar to the running of the statute of limitations has nine months from the end of the 60 days from the issuance of the prior process to obtain new process or the plaintiff must recommence the action within one year after 60 days from the