IN THE CIRCUIT COURT FOR DECATUR COUNTY, TENNESSEE

TWENTY-FOURTH JUDICIAL DISTRICT AT DECATURVILLE

**STATE OF TENNESSEE ) evidentiary hearing requested**

**)**

vs. **)** No. No. 20CC1-2014-CR-20

**)**

**JASON WAYNE AUTRY )**

**DEFENDANT AUTRY’S MOTION TO DISMISS INDICTMENT**

**FOR UNNECESSARY DELAY OR, IN THE ALTERNATIVE,**

**FOR IMPOSITION OF CIVIL CONTEMPT SANCTIONS**

Comes now the accused Jason Wayne Autry, by and through counsel, pursuant to State and Federal Constitutional Due Process guaranties, Rule 48(b) of the Tennessee Rules of Criminal Procedure and Tennessee Code Annotated § 29-9-104, and moves the Court for an order dismissing the indictment in this case with prejudice for unnecessary delay in bringing the Defendant to trial. In the alternative, the accused would move the Court to find the District Attorney General *Pro Tempore* in willful civil contempt and to commit her to jail until the State of Tennessee complies with this Court’s orders of May 2014 granting the accused’s motion for bill of particulars and the accused’s motion for notice of State’s intention to use evidence.

Because unnecessary delay presents a mixed question of law and fact, an evidentiary hearing is appropriate and necessary. *See, State v. Hawk,* 170 S.W.3d 547, 555 (Tenn. 2005).

For cause the accused would show that a series of prosecuting attorneys have been trifling with the Court and with defense counsel regarding matters ordered by the Court on the day of defense counsel’s initial appearance in this case during May of 2014. The Court then, in an oral ruling from the bench, granted the accused’s motion for a bill of particulars and directed the filing thereof. The Court further granted the accused’s motion for notice of intent to use evidence. The Court then ordered that discovery materials be furnished by August 29, 2014.

The State of Tennessee, represented serially by two District Attorneys General and by one District Attorney General *Pro Tempore,* has inexplicably and inexcusably refused to comply with each of these orders. Indeed, the State of Tennessee did not furnish any discovery materials ***at all*** by the August 29, 2014 deadline ordered by the Court.[[1]](#footnote-1)

On December 12, 2014, the State filed what purported to be a “response” to the accused’s Tenn.R.Crim.P. 12(d)(2) motion – notwithstanding that the motion had been granted more than six months earlier. This “response,” however, is illusory. The State there merely avers, “At present, the State intends to offer at trial all relevant discoverable evidence.”[[2]](#footnote-2)

That is no response at all. The late Judge Joe B. Jones opined for the Court of Criminal Appeals in *State v. Louis Francis Giannini,* C.C.A. No. 36 (Shelby Co.), 1991 Tenn. Crim. App. LEXIS 477, **\*\*14-15** (June 12, 1991) (copy attached):

Contrary to the contention of the assistant district attorney general, compliance with Rule 12(d)(2) by the State is not discretionary. The rule contemplates compliance by the State. When the State fails to comply with a defense motion predicated upon this rule, the trial court can order compliance. Moreover, **responding that the State intends to “use in its evidence in chief at trial all evidence to which the defendant may be entitled discovery pursuant to Rule 16” does not constitute compliance with the rule.** Such a response does not comport with the spirit or letter of Rule 12. The rule contemplates that the State will provide the defendant with specific information concerning the evidence the State intends to introduce.  [Emphasis added.]

When the State filed its December 12 “response,” the District Attorney General was on notice as to the rank inadequacy thereof. Footnote 8 of the accused’s request for discovery specifically cited the Court of Criminal Appeals opinion in *Giannini, supra:*

8 Please note that a response that the State intends to use in its evidence in chief at trial all evidence to which the defendant may be entitled discovery pursuant to Rule 16 is inadequate and does not constitute compliance with Rule 12(d)(2). Such a response does not comport with the spirit or letter of Rule 12. The rule contem-plates that the State will provide the defendant with specific information concerning the evidence the State intends to introduce. *See, State v. Louis Francis Giannini,* C.C.A. No. 36 (Shelby Co.), 1991 Tenn. Crim. App. LEXIS 477, **\*\*13–14** (June 12, 1991).

The prosecutors are plainly trifling with the Court and with defense counsel.

Each of the three prosecutors responsible for this case has danced around the maypole regarding the Bill of Particulars which the Court ordered almost ten months ago. Mr. McAdams simply, but flagrantly, ignored the Court’s order. Mr. Stowe requested additional time, but never complied. The Court on December 17, 2014 ordered the State to file the Bill of Particulars on or before December 24, 2014. In a motion bearing a certificate of service of December 23, 2014, Mr. Stowe moved for his own recusal. This motion was filed on December 29, 2014, and the Court granted the motion in an order filed January 5, 2015.

Ms. Nichols has been similarly noncompliant. She was appointed District Attorney *Pro Tempore* by order filed November 3, 2014. A motion filed on December 17, 2014 by Amy Weirich, District Attorney General for Shelby County and Ms. Nichols’ superior, requested permission to remove Ms. Nichols as District Attorney *Pro Tem.* This order was granted by the Court on the same day that it was filed. When Mr. Stowe’s recusal was granted in an order filed January 5, 2015, the Court on the next day reappointed Ms. Nichols as District Attorney *Pro Tem.*

Except for a hiatus of twenty (20) days during the holiday season, Ms. Nichols has served in this case for the past four months. That is ample time to have complied with the Court’s orders which are now more than nine months old.[[3]](#footnote-3) Ms. Nichols has quite conspicuously proffered no excuse or explanation for her failure to do so.[[4]](#footnote-4) The State continues to trifle with the Court.

The principal relief which the accused seeks in this motion is dismissal of the indictment under Tenn.R.Crim.P. 48(b). Should the Court not see fit to dismiss, however, the obstreperous conduct of the prosecutors, the accused submits, is and remains contumacious. Tennessee Code Annotated § 29-9-102(3) provides that the power to inflict punishment for contempts of court extends to, among other things, “The willful disobedience or resistance of any officer of the such courts, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command of such courts[.]” Tenn. Code Ann. § 29-9-104(a) states that “If the contempt consists in an omission to perform an act which it is yet in the power of the person to perform, the person may be imprisoned until such person performs it.”

Jennifer Nichols is the third in a series of prosecutors who is flouting the orders of this Court. If she cannot see the light, perhaps the Court should make her feel the heat by jailing her until she files the Bill of Particulars and a proper Notice of Intent to Use Evidence which were ordered last spring.

**Unnecessary delay:**

Tenn.R.Crim.P. 48(b) states:

The court may dismiss an indictment, presentment, information, or complaint if unnecessary delay occurs in:

**(1)** presenting to a grand jury a charge against a defendant who has been held to answer to the trial court; or

**(2)** bringing a defendant to trial.

Subsection (b)(2) is relevant here. This provision, along with constitutional and statutory speedy trial guaranties, is designed “to protect the accused against oppressive pre-trial incarceration, the anxiety and concern due to unresolved criminal charges, and the risk that evidence will be lost or memories diminished.” *State v. Hudgins,* 188 S.W.3d 663, 667 (Tenn.Crim.App. 2005), quoting [*State v. Utley,*  956 S.W.2d 489, 492 (Tenn. 1997) (citing](https://www.lexis.com/research/buttonTFLink?_m=d0c16411e55606e720ba4042da673476&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b188%20S.W.3d%20663%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=26&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b956%20S.W.2d%20489%2c%20492%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=f03cbce762892be69ec90ce0dedac6b1) [*Doggett v. United States,* 505 U.S. 647, 654, 112 S.Ct. 2686, 2692, 120 L.Ed.2d 520 (1992))](https://www.lexis.com/research/buttonTFLink?_m=d0c16411e55606e720ba4042da673476&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b188%20S.W.3d%20663%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=27&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b505%20U.S.%20647%2c%20654%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=fd6f9febc0656a4bb384b14abd0a4f09). Rule 48(b) grants trial courts authority to dismiss a case for want of prosecution, whether or not there has been a constitutional speedy trial violation; the rule is derived from the inherent common law power of the trial court to control its own jurisdiction and docket. *State v. Benn,* 713 S.W.2d 308, 310 (Tenn. 1986).

The factors to be considered in passing on a motion to dismiss under Rule 48(b) where there has been no constitutional violation are the length of the delay, the reasons for the delay, the prejudice to defendant, and waiver by the defendant. Of course, these are the same factors that determine a speedy trial constitutional violation, except for the factor of a defendant’s assertion of his right to a speedy trial. When it is found to be appropriate to dismiss with prejudice, the trial judge must make express findings of fact on each of the relevant factors listed herein. *Benn, supra,* at 311. Decisional law discussing constitutional speedy trial guaranties is accordingly persuasive as to whether delay is unnecessary for purposes of Rule 48(b).

The factors relevant to a speedy trial inquiry – and *ipso jure* to a Rule 48(b) unnecessary delay inquiry by virtue of *Benn, supra* -- are interrelated and depend upon the particular circumstances of each case. *State v. Simmons,* 54 S.W.3d 755, 762 (Tenn. 2001). A delay of one year or longer “marks the point at which courts deem the delay unreasonable enough to trigger the . . . inquiry” into the remaining factors.  [*Doggett v. United States, supra,* 505 U.S. at 652, 112 S. Ct. at 2691,](https://www.lexis.com/research/buttonTFLink?_m=9833b31e8c84cac780a8d0cc4f71a356&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b985%20S.W.2d%201%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=30&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b505%20U.S.%20647%2c%20652%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAl&_md5=394f8c769d20997a72f3af45eeec3fc2) note 1.  *Accord: State v. Berry,* 141 S.W.3d 549, 569 (Tenn. 2004); *State v. Utley, supra,* 956 S.W.2d at 494; *State v. Vickers,* 985 S.W.2d 1, 5 (Tenn.Crim.App. 1997).

That threshold is met here. Mr. Autry was changed in an indictment filed April 29, 2014, and 46 weeks later he and his counsel have still not been meaningfully informed of the nature and cause of the accusation. The case is far from being in a trial posture.

The second factor, the reason for delay, generally falls into one of four categories: “(1) intentional delay to gain a tactical advantage over the defense or delay designed to harass the defendant; (2) bureaucratic indifference or negligence; (3) delay necessary to the fair and effective prosecution of the case; and (4) delay caused, or acquiesced in, by the defense.”  [*State v. Wood,* 924 S.W.2d 342, 346-47 (Tenn. 1996)](https://www.lexis.com/research/buttonTFLink?_m=d0c16411e55606e720ba4042da673476&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b188%20S.W.3d%20663%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=40&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b924%20S.W.2d%20342%2c%20346%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=cc4d5bc0439e92f8743ed467358e4aba); *State v. Hudgins, supra,* 188 S.W.3d at 667-68. Here the accused has in no wise contributed to the delay.

The defense need not show that the delay was intentional. Our courts have recognized that:

“A negligent failure by the government to ensure speedy trial is virtually as damaging to the interests protected by the right as an intentional failure; when negligence is the cause, the only interest necessarily unaffected is our common concern to prevent deliberate misuse of the criminal process by public officials. Thus the crucial question in determining the legitimacy of governmental delay may be whether it might reasonably have been avoided -- whether it was unnecessary.”

*State v. Wallace,* 648 S.W.2d 264, 269 (Tenn.Crim.App. 1980), quoting concurring opinion of Justice Brennan in [*Dickey v. Florida*, 398 U.S. 30, 51-52, 90 S.Ct. 1564, 26 L.Ed.2d 26 (1970)](https://www.lexis.com/research/buttonTFLink?_m=3f80d262f0d76a5674aa825aa55c0b8f&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b648%20S.W.2d%20264%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=34&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b398%20U.S.%2030%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=3&_startdoc=1&wchp=dGLbVzk-zSkAA&_md5=37a1ff9befe6ca4fd05f86aba0e64d67).

Courts do not necessarily require a defendant to affirmatively prove particularized prejudice. *State v. Simmons,* 54 S.W.3d 755, 760 (Tenn. 2001); [*Doggett v. United States*, 505 U.S. 647, 654-55](https://www.lexis.com/research/buttonTFLink?_m=e592589e6b54912c1e407d3f68ec847f&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b54%20S.W.3d%20755%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=63&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b505%20U.S.%20647%2c%20654%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=493c4a45a487c9950200ee8423d0d470), 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992); [*Wood*, 924 S.W.2d at 348](https://www.lexis.com/research/buttonTFLink?_m=e592589e6b54912c1e407d3f68ec847f&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b54%20S.W.3d%20755%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=64&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b924%20S.W.2d%20342%2c%20348%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=be6e16beedb271645348edeb4f847ef7). However, when evaluating this factor courts must be aware that the speedy trial right is designed: (1) to prevent undue and oppressive incarceration prior to trial; (2) to minimize anxiety and concern accompanying public accusation; and (3) to limit the possibilities that long delay will impair the defense. *Simmons,* at 760; *State v.* [*Bishop*, 493 S.W.2d 81, 85](https://www.lexis.com/research/buttonTFLink?_m=e592589e6b54912c1e407d3f68ec847f&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b54%20S.W.3d%20755%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=65&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b493%20S.W.2d%2081%2c%2085%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=76ae62bb3df85b7c85850be2f414b7f9) (Tenn. 1973).

At the time of the indictment, the accused was already in custody of the Tennessee Department of Correction serving concurrent state and federal sentences. The courts have recognized, however, that the prospect prejudice to an already incarcerated prisoner from unnecessary delay is no less real than prejudice to a pretrial detainee:

At first blush it might appear that a man already in prison under a lawful sentence is hardly in a position to suffer from “undue and oppressive incarceration prior to trial.” But the fact is that delay in bringing such a person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge. First, the possibility that the defendant already in prison might receive a sentence at least partially concurrent with the one he is serving may be forever lost if trial of the pending charge is postponed.  Secondly, under procedures now widely practiced, the duration of his present imprisonment may be increased, and the conditions under which he must serve his sentence greatly worsened, by the pendency of another criminal charge outstanding against him.

*Smith v. Hooey,* [393 U.S. 374, 378, 89 S.Ct. 575, 577, 21 L.Ed.2d 607 (1969)](https://www.lexis.com/research/buttonTFLink?_m=5b0db76d2e2b0a26642fb6c7ce7dd9e2&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b648%20S.W.2d%20264%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=51&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b393%20U.S.%20374%2c%20378%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=25&_startdoc=21&wchp=dGLzVzB-zSkAl&_md5=03225004646e47572c7877ce9a68696a) [footnotes omitted]. *See also, State v. Wallace, supra,* 648 S.W.2d at 270. While it might be argued that a person already in prison would be less likely than others to be affected by “anxiety and concern accompanying public accusation,” there is reason to believe that an outstanding untried charge (of which even a convict may, of course, be innocent) can have fully as depressive an effect upon a prisoner as upon a person who is at large.  *Smith,* 389 U.S. at 379. The Supreme Court in *Smith* quoted a former Director of the Federal Bureau of Prisons:

“It is in their effect upon the prisoner and our attempts to rehabilitate him that detainers are most corrosive. The strain of having to serve a sentence with the uncertain prospect of being taken into the custody of another state at the conclusion interferes with the prisoner’s ability to take maximum advantage of his institutional opportunities. His anxiety and depression may leave him with little inclination toward self-improvement.”

*Id.,* at 379, 89 S.Ct. at 578.

Here the evidence will show that because of the pendency of the instant charges Mr. Autry is being housed by TDOC under significantly more onerous conditions than would otherwise be the case. This constitutes prejudice under *Smith v. Hooey, supra,* 393 U.S. at 378.

At least one prospective witness who may have furnished the prosecution informa-tion about Mr. Autry has permanently removed himself from the territorial jurisdiction of this Court. Because of the delay here, the late Shayne (Let’s Make A Deal) Austin can never be cross-examined by defense counsel nor called as a defense witness, and a possible jury instruction on flight falls well short of what Dean Wigmore characterized as the “greatest legal engine ever invented for the discovery of truth.” 5 J. Wigmore, *Evidence* § 1397.

The succession of prosecutors’ *seriatim* delays in furnishing defense counsel basic information via a bill of particulars about how Mr. Autry came to be charged has hampered counsel’s ability to prepare for the defense of this case. Pursuant to the provisions of both the Tennessee and federal constitutions, criminal defendants have a right to know “the nature and cause of the accusation.”  [Tenn. Const. Art. I, § 9](https://www.lexis.com/research/buttonTFLink?_m=a95e439d3868ede42311b19df3fb5f3c&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b820%20S.W.2d%20739%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=12&_butInline=1&_butinfo=TENN.%20CONST.%20I%209&_fmtstr=FULL&docnum=12&_startdoc=11&wchp=dGLzVzk-zSkAW&_md5=5c162964c7f2f59fd9c47bc2ead16af3); [U.S. Const. Amend. 6](https://www.lexis.com/research/buttonTFLink?_m=a95e439d3868ede42311b19df3fb5f3c&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b820%20S.W.2d%20739%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=13&_butInline=1&_butinfo=U.S.%20CONST.%20AMEND.%206&_fmtstr=FULL&docnum=12&_startdoc=11&wchp=dGLzVzk-zSkAW&_md5=301169604cab0b8a17da2f8deb0cea68).  *State v. Byrd,* 820 S.W.2d 739, 740 (Tenn. 1991).

This right attaches at arraignment or when a defendant first appears before a judicial officer and is informed of the charge in the complaint and of various rights in further proceedings. *See, State v. Burdick,* 395 S.W.3d 120, 129 (Tenn. 2012). We are here long past arraignment, and while the Defendant and defense counsel are informed of which statutes the prosecution contends Mr. Autry has violated, the prosecution is playing hide the ball regarding the ***cause of the accusation.***

In addition to constitutional notice requirements, due process guarantees that the accused will have a fair opportunity to defend against the charges. *State v. Trusty,* 919 S.W.2d 305, 309 (Tenn. 1996), overruled in part on other grounds *State v. Dominy,* 6 S.W.3d 472, 477 (Tenn. 1999). The function of a bill of particulars is to provide the defendant with the details of the charge he faces, to avoid his prejudicial surprise at trial, and to allow him to preserve any claim of double jeopardy.  [*State v. Byrd*, 820 S.W.2d 739, 741 (Tenn. 1991)](https://www.lexis.com/research/buttonTFLink?_m=0f64e237faf0484c0b1f114053e85e23&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2003%20Tenn.%20Crim.%20App.%20LEXIS%20210%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=42&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b820%20S.W.2d%20739%2c%20741%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=15&_startdoc=11&wchp=dGLbVzB-zSkAW&_md5=2a8d216fca6cb61144d4455919e88aad); [*State v. Hicks*, 666 S.W.2d 54, 56 (Tenn. 1984)](https://www.lexis.com/research/buttonTFLink?_m=0f64e237faf0484c0b1f114053e85e23&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2003%20Tenn.%20Crim.%20App.%20LEXIS%20210%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=43&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b666%20S.W.2d%2054%2c%2056%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=15&_startdoc=11&wchp=dGLbVzB-zSkAW&_md5=ed393f8b0bd6ddbe6c168521708f8b1b). Here defense counsel have been severely hamstrung by a lack of information as to the facts underlying the serious charges against Mr. Autry.

The undersigned counsel strongly suspect that the government is playing hide the ball in order to avoid acknowledging publicly that Mr. Autry has been charged with a capital crime in the absence of any legitimate factual basis for the charge. If there is presently no probable cause to maintain this prosecution of Mr. Autry, it should be dismissed. “So long as the prosecutor has probable cause to believe that the accused committed an offense, the decision whether to prosecute, and what charge to bring before a grand jury generally rests entirely within the discretion of the prosecution, limited only by certain constitutional constraints.” *State v. Superior Oil, Inc.,* 875 S.W.2d 658, 660 (Tenn. 1994).

The requirement of probable cause serves as the principal constitutional constraint upon the prosecutor’s charging decision. Rule 8 of the Supreme Court of Tennessee, RPC 3.8(a) requires that the prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause. It is unprofessional conduct for a prosecutor to recommend an indictment on less than probable cause.[[5]](#footnote-5)  *United States v. Lovasco,* [431 U.S. 783, 790, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1997)](https://www.lexis.com/research/buttonTFLink?_m=db0eeea45fa3e31fb8e03009e8fdb8e7&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b402%20S.W.3d%20615%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=96&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20U.S.%20783%2c%20790%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLzVzB-zSkAl&_md5=028b8a49654589b037e9964871818c9d), citing ABA Code of Professional Responsibility DR 7-103(A) (1969) and ABA Project on Standards for Criminal Justice, The Prosecution Function § 3.9 (App. Draft 1971).

“Filing ***or*** pursuing charges without probable cause is, of course, unethical.” J. W. Hall, Jr., *Professional Responsibility of the Criminal Lawyer, 2d Ed.,* § 11.12, 409 (1996) [emphasis added], citing RPC 3.8(a). If the facts and circumstances presently known to the prosecution no longer support probable cause as to Jason Autry, then the prosecutorial duty is clear.[[6]](#footnote-6)

Because the instant case was initiated by direct presentment without a preliminary hearing, there has been no judicial determination, nor any adversarial testing, as to whether probable cause to believe that Mr. Autry committed the crimes of which he is accused did, does or does not exist. Defense counsel, mindful of Justice Louis Brandeis’ maxim that sunlight is said to be the best of disinfectants, respectfully submit that a present re-evaluation of whether Mr. Autry should have been charged is entirely appropriate.

**Civil contempt:**

The accused submits that Ms. Nichols’ continuing refusal to comply with the orders of this Court is contumacious. “Civil contempt occurs when a person does not comply with a court order and an action is brought by a [litigant] to enforce rights under the order that has been violated. . . . Punishment for civil contempt is designed to coerce compliance with the court’s order and is imposed at the insistence and for the benefit of the . . . party who has suffered a violation of rights.” *Doe v. Board of Professional Responsibility,* 104 S.W.3d 465, 473 (Tenn. 2003).

The power to punish for contempt has long been regarded as essential to the pro-tection and existence of the courts and the proper administration of justice.  At common law, the contempt power was broad and undefined.  Concerned about the potential abuse of this power, the Tennessee General Assembly, like its counterparts in other states, enacted statutes to define and limit the courts’ power to punish for contempt. As a result, the courts’ contempt power is now purely statutory. *Konvalinka v. Chattanooga-Hamilton County Hospital Authority,* 249 S.W.3d 346, 354 (Tenn. 2008).

[Tenn. Code Ann. § 16–1–103](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS16-1-103&originatingDoc=I1fe25b14da7111dcb6a3a099756c05b7&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) provides that “[f]or the effectual exercise of its powers, every court is vested with the power to punish for contempt, as provided for in this code.” To give effect to this power, [Tenn. Code Ann. §§ 29–9–101](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS29-9-101&originatingDoc=I1fe25b14da7111dcb6a3a099756c05b7&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) to –108 further define the scope of the contempt power and the punishment and remedies for con-temptuous acts.  *Konvalinka, supra,* at 354.

[Tenn. Code Ann. § 29–9–102(3) empowers](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS29-9-102&originatingDoc=I1fe25b14da7111dcb6a3a099756c05b7&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_d08f0000f5f67) the courts to use their contempt powers in circumstances involving “[t]he willful disobedience or resistance of any officer of the such courts, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command of such courts.” This provision enables the courts to maintain the integrity of their orders.  *Konvalinka, supra,* at 354; [Wilson v. Wilson, 984 S.W.2d 898, 904 (Tenn. 1998)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1998254561&pubNum=713&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_713_904).

The Supreme Court in *Konvalinka, supra,* opined that civil contempt claims based upon an alleged disobedience of a court order have four essential elements. First, the order alleged to have been violated must be “lawful.”[[7]](#footnote-7)  Second, the order alleged to have been violated must be clear, specific, and unambiguous.[[8]](#footnote-8)  Third, the person alleged to have violated the order must have actually disobeyed or otherwise resisted the order.[[9]](#footnote-9)  Fourth, the person’s violation of the order must be “willful.”[[10]](#footnote-10) 249 S.W.3d at 354-55.

The willfulness requirement is construed less strictly in civil contempt proceedings than in criminal contempt proceedings. In the context of a civil contempt proceeding under [Tenn. Code Ann. § 29-9-102(3)](https://www.lexis.com/research/buttonTFLink?_m=2bdb5f6faff30f49bfd1171b74d82f76&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b249%20S.W.3d%20346%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=142&_butInline=1&_butinfo=TENN.%20CODE%20ANN.%2029-9-102&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAA&_md5=a02b4a425d745c257f4064f601a8061b), acting willfully does not require the same standard of culpability that is required in the criminal context. *Konvalinka,* at 357; [*State ex rel. Flowers v. Tenn. Trucking Ass’n Self Ins. Group Trust*, 209 S.W.3d 602, 612](https://www.lexis.com/research/buttonTFLink?_m=2bdb5f6faff30f49bfd1171b74d82f76&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b249%20S.W.3d%20346%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=143&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b209%20S.W.3d%20602%2c%20612%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAA&_md5=fc74994cc19a9d64faebf121511b1dab) (Tenn.App. 2006. Rather, willful conduct

consists of acts or failures to act that are intentional or voluntary rather than accidental or inadvertant. Conduct is ‘willful’ if it is the product of free will rather than coercion. Thus, a person acts ‘willfully’ if he or she is a free agent, knows what he or she is doing, and intends to do what he or she is doing.

*Konvalinka,* at 357, quoting *Flowers,* at 612. “Thus,acting contrary to a known duty may constitute willfulness for the purpose of a civil contempt proceeding.” *Id.,* at 357. “After determining that a person has willfully violated a lawful and sufficiently clear and precise order, the court may, in its discretion, decide to hold the person in civil contempt.” *Id.,* at 358.

Defense counsel are tempted to say that it is time for the government to fish or cut bait. After further reflection, however, the time for the prosecution’s fishing expedition – which in this case has included jailing people willy-nilly without bond, only to dismiss charges on the eve of an evidentiary hearing -- has long passed.

THE FOREGOING PREMISES CONSIDERED, the Defendant Jason Wayne Autry respectfully moves the Court for an order dismissing the indictment in this case with prejudice for unnecessary delay in bringing the Defendant to trial or, in the alternative, the to find the District Attorney General *Pro Tempore* in willful civil contempt and to commit her to jail until the State of Tennessee complies with this Court’s orders of May 2014 granting the accused’s motion for bill of particulars and the accused’s motion for notice of State’s intention to use evidence.

Respectfully submitted,

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FLETCHER W. LONG # 18755

JOHN E. HERBISON # 12659

Long & Herbison, PLLC

110 Franklin Street, Suite 300

Clarksville, Tennessee 37040

(931) 896-2066

MICHAEL J. FLANAGAN # 9445

95 White Bridge Road, Suite 208

Nashville, Tennessee 37205

(615) 351-6891

Attorneys for Defendant Autry

**CERTIFICATE OF SERVICE:**

I certify that a correct and complete copy of the foregoing has been transmitted electronically to [Jennifer.nichols@scdag.com](mailto:Jennifer.nichols@scdag.com) and mailed, first class postage prepaid, to District Attorney *Pro Tempore* Jennifer Nichols, 201 Poplar, Suite 301, Memphis, Tennessee 38103, on or before this \_\_\_\_\_\_ day of March, 2015.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John E. Herbison

1. The State did thereafter serve a voluminous “document dump” on defense counsel. This belated discovery, however, is conspicuously lacking in forensic reports relative to the alleged remains of Holly Bobo, which are said to have been found in early September 2014 – more than six months ago. [↑](#footnote-ref-1)
2. Putting aside application of the law of the case doctrine to the Court’s May 2014 oral ruling, defense counsel wonder whether counsel for the State are conflating discoverability with admissibility. Did Mr. Stowe and Ms. Nichols seriously contend, when that “response” was filed under their auspices on behalf of the State, that “all relevant discoverable evidence” is *ipso facto* admissible? Does Ms. Nichols’ subsequent failure to supplement the State’s “response” following her reappointment indicate that she presently contends that? [↑](#footnote-ref-2)
3. It should not escape the Court’s notice, and defense counsel would be remiss not to point out, that Ms. Nichols comes before this Court from a prosecutor’s office which the Supreme Court of Tennessee has specifically chastised for repeatedly withholding evidence that should have been disclosed to the defense. *See, State v. Jackson,* 444 S.W.3d 554, 597 n.52 (Tenn. 2014).

   Simply put, this is not Ms. Nichols’ first rodeo. Some time ago, serious prosecutorial misconduct by that office led the Supreme Court, in a case involving Ms. Nichols and her now-boss Ms. Weirich, to opine that dismissal of an otherwise valid indictment returned by a grand jury is an available remedy for prosecutorial misconduct (albeit one little-used) and that dismissal of an indictment may be appropriate as well under a court’s general supervisory authority where prosecutorial misconduct, even while short of constitutional error, has prejudiced a defendant. *State v. Culbreath,* 30 S.W.3d 309, 317 (Tenn. 2000). [↑](#footnote-ref-3)
4. This calls to mind the late Ned Ray McWherter’s admonition to recalcitrant legislators, first as House Speaker and then as Governor: “If you don’t want to work, you ought not hire out.” http://knoxblogs.com/humphreyhill/category/mike-mcwherter/ [↑](#footnote-ref-4)
5. Indeed, “A prosecutor neither is, nor should consider himself to be, an advocate before he has probable cause to have anyone arrested.” *Buckley v. Fitzsimmons,* 509 U.S. 259, 274, 113 S.Ct. 2606, 125 L.Ed.2d 209 (1993). [↑](#footnote-ref-5)
6. If, as defense counsel suspect, the claimed factual basis for prosecuting Mr. Autry comes exclusively from those in the criminal milieu (Shayne Austin, who gave information after being promised immunity for, *inter alia,* perjury or false statement? Dylan Adams?) that bears upon the propriety *vel non* of maintaining the prosecution. The Supreme Court of Tennessee has opined in *State v. Bishop,* 431 S.W.3d 22, 36 (Tenn. 2014):

   We have long held that information provided by a citizen-informant carries a presumption of reliability. Stated another way, if the source of the information is a person (1) who is known to the police, (2) who is not part of the “criminal milieu,” and (3) whose motivation is to aid the police without any expectation of remuner-ation, then the information is deemed reliable and is sufficient to provide probable cause for arrest. [*State v. Melson*, 638 S.W.2d at 354-56](https://www.lexis.com/research/buttonTFLink?_m=fc23a991d11b830a1487b245e0cb6157&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20S.W.3d%2022%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=132&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b638%20S.W.2d%20342%2c%20354%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=91ad7aeb6e8e4b0f335f0a469730d6ca).

   On the other hand, when the information is provided (1) by a professional informant who gives tips for money or favors, (2) by a person from the “criminal milieu” who may have an ax to grind, or (3) by an anonymous informant, the infor-mation is presumptively suspect, and the State must establish its credibility. *See* [*State v. Williams*, 193 S.W.3d 502, 507-08 (Tenn. 2006)](https://www.lexis.com/research/buttonTFLink?_m=fc23a991d11b830a1487b245e0cb6157&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20S.W.3d%2022%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=133&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b193%20S.W.3d%20502%2c%20507%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=a5a698a199cfca8ad76fa12a4ef50f14); [*State v. Carter*, 160 S.W.3d 526, 534 (Tenn. 2005)](https://www.lexis.com/research/buttonTFLink?_m=fc23a991d11b830a1487b245e0cb6157&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20S.W.3d%2022%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=134&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b160%20S.W.3d%20526%2c%20534%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=82ce7daac7534a6051b411ea5318e7a9). To do this, we explained in [*State v. Jacumin*](https://www.lexis.com/research/buttonTFLink?_m=fc23a991d11b830a1487b245e0cb6157&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20S.W.3d%2022%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=135&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b778%20S.W.2d%20430%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=a548dd01a9f280a4f5a3020badc95be0)that the State must satisfy the two-pronged *Aguilar-Spinelli* test.[*State v. Jacumin*, 778 S.W.2d 430, 436 (Tenn. 1989)](https://www.lexis.com/research/buttonTFLink?_m=fc23a991d11b830a1487b245e0cb6157&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20S.W.3d%2022%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=136&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b778%20S.W.2d%20430%2c%20436%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=534136f28c019da1e1192db36c446ffd).

   When applying the [*Aguilar*](https://www.lexis.com/research/buttonTFLink?_m=fc23a991d11b830a1487b245e0cb6157&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20S.W.3d%2022%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=138&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b378%20U.S.%20108%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=34f922a7419f206f22154da965b88dd9)*-*[*Spinelli*](https://www.lexis.com/research/buttonTFLink?_m=fc23a991d11b830a1487b245e0cb6157&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20S.W.3d%2022%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=139&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b393%20U.S.%20410%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=677620efac011f479e6a00a0f24bc307) test, a statement from a professional, “criminal milieu,” or an anonymous informant can provide probable cause only if the State demonstrates a strong “basis of [the informant’s] knowledge” and the “veracity” of the information. The “basis of knowledge” prong involves how the informant came to know the information he or she claims to know. The “veracity” prong requires facts that demonstrate either that the informant is personally credible or that the information itself is reliable. The credibility of the informant’s information may also be buttressed by independent corroboration of its details. However, it is not necessary to corroborate every detail of the informant’s infor-mation, [*State v. Jacumin*, 778 S.W.2d at 432, 436](https://www.lexis.com/research/buttonTFLink?_m=fc23a991d11b830a1487b245e0cb6157&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20S.W.3d%2022%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=140&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b778%20S.W.2d%20430%2c%20432%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=2b79263f0e65b4f5a447a7771203295a), or to “directly link the suspect to the commission of the crime.” Corroboration of “only innocent aspects of the story” may suffice. *State* [*v. Melson*, 638 S.W.2d at 355](https://www.lexis.com/research/buttonTFLink?_m=fc23a991d11b830a1487b245e0cb6157&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20S.W.3d%2022%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=141&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b638%20S.W.2d%20342%2c%20355%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=a133884721219bb2b195f8262375ba5f) (quoting [*United States v. Rollins*, 522 F.2d 160, 164-65 (2d Cir. 1975))](https://www.lexis.com/research/buttonTFLink?_m=fc23a991d11b830a1487b245e0cb6157&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20S.W.3d%2022%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=142&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b522%20F.2d%20160%2c%20164%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=dc98d522d871af794fe574f71c53635f); *see also*[*State v. Smotherman*, 201 S.W.3d 657, 664 (Tenn. 2006)](https://www.lexis.com/research/buttonTFLink?_m=fc23a991d11b830a1487b245e0cb6157&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20S.W.3d%2022%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=143&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b201%20S.W.3d%20657%2c%20664%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=7740782c62217e6c24b782be9eddac60).

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   We have never addressed directly whether the statements of a person who confesses to a crime and implicates another in the process should be considered presumptively reliable. The Court of Criminal Appeals has determined that such a confession should not be considered to be presumptively reliable.  *See*[*State v. Lewis*, 36 S.W.3d 88, 99 (Tenn.Crim.App. 2000)](https://www.lexis.com/research/buttonTFLink?_m=fc23a991d11b830a1487b245e0cb6157&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20S.W.3d%2022%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=152&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b36%20S.W.3d%2088%2c%2099%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=18a08d3287cfe5013b4cc4b8f0610d34) (holding that a “[*Jacumin*](https://www.lexis.com/research/buttonTFLink?_m=fc23a991d11b830a1487b245e0cb6157&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b431%20S.W.3d%2022%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=153&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b778%20S.W.2d%20430%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzt-zSkAb&_md5=9bebbd028c5f9da69dae68a1c49a7982) analysis is necessary” when the informant is the defendant’s accomplice). We agree with this conclusion.

   431 S.W.3d at 38-39. [↑](#footnote-ref-6)
7. [Tenn. Code Ann. § 29–9–102(3)](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS29-9-102&originatingDoc=I1fe25b14da7111dcb6a3a099756c05b7&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_d08f0000f5f67). [↑](#footnote-ref-7)
8. [Doe v. Board of Professional Responsibility, supra, 104 S.W.3d at 471](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2003335040&pubNum=4644&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_4644_471) (holding that a person cannot be held in contempt unless he or she violates a “specific order”); [Long v. McAllister–Long, 221 S.W.3d 1, 14 (Tenn.App. 2006)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2010194011&pubNum=4644&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_4644_14) (holding that the order alleged to have been violated must be “clear and unambiguous”). [↑](#footnote-ref-8)
9. [Tenn. Code Ann. § 29–9–102(3)](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000039&cite=TNSTS29-9-102&originatingDoc=I1fe25b14da7111dcb6a3a099756c05b7&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_d08f0000f5f67). [↑](#footnote-ref-9)
10. *Ibid.* [↑](#footnote-ref-10)