

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

* NO. [REDACTED]

*

* DEATH PENALTY

*

VS.

*

[REDACTED]

* DIVISION [REDACTED]

EX PARTE, SEALED MOTIONS FOR DEFENSE SERVICES

Dated: 7/30/01

OFFICE OF DISTRICT PUBLIC DEFENDER
ARDENA J. GARTH
701 Cherry Street, Suite 300
Chattanooga, Tennessee 37402
(423) 634-6374

Contents: 2 Ex Parte Motions (6 pages)
Memorandum of Law (7 pages)
Affidavit of Attorney (9 pages)
Appendix (consisting of 5 items and a total of 61 pages)

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BY _____ D.C.

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IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

* NO. [REDACTED]

*

* DEATH PENALTY

*

*

* DIVISION [REDACTED]

IS.

[REDACTED]

EX PARTE. SEALED MOTION FOR DEFENSE SERVICES

Comes now the Defendant, through court appointed counsel, and respectfully moves this court for the defense services set out below pursuant to the authority set out in T.C.A. § 40-14-207(b); Tennessee Supreme Court Rule 13(5)(a); Wheeler v. Oklahoma, 470 US. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985), other judicial authority; the Sixth, Eight, and Fourteenth Amendments to the United States Constitution, Article I, Section 8, 9, and 16 of the Tennessee Constitution, and the attached Memorandum of Law, Affidavit of counsel, and the Affidavits and Resume attached thereto.

The factual basis for the support services requested herein is set out in counsels' Affidavit, attached hereto, with Appendices of Affidavits and Resume of the proposed expert whose services are requested herein. Specifically, the services requested are as follows:

1. The services of [REDACTED], [REDACTED] for an examination of the original Nagra audio tape recordings made by undercover officer [REDACTED] to

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(423) 634-6374

determine if the tapes have been altered or tampered with at a cost not to exceed \$12,300 for pre-trial work, plus reasonable and necessary expenses, said services to be performed as set out in the Affidavit of the attorney and the Affidavit of the expert attached hereto and made a part hereof.

The Defendant anticipates that the expert and services identified above will be competent and appropriate to adequately prepare the areas identified concerning Defendant's case. If the competency, adequacy or area of expertise of this expert comes into question as the preparation of the case unfolds, counsel for the Defendant will notify the court and seek appropriate relief. The details of the location, time, and place of relevant work to be conducted by the expert are made known to the court by the attached Affidavits and the cost of any further necessary expert services or of other necessary expenses will be made known to the court as the need arises. To the extent possible, the details of the anticipated expenditures are set out in the attached Affidavits.

Defendant is aware of and will comply with the requirements of Tennessee Supreme Court Rule 13(4)(5) regarding the necessity of obtaining authorization by the chief justice before incurring expenses over \$5,000 and obtaining prior authorization for extraordinary expenses. This information is offered in compliance with Tennessee Supreme Court Rule 13 (5).

out in the attached Memorandum of Law, Affidavit of counsel, and the Affidavits and Resume attached thereto.

Dated: 30 July 2001

Respectfully submitted,

POOLE, THORNBURY, MORGAN & RICHARDSON

[REDACTED]

[REDACTED]

732 Cherry Street
Chattanooga, Tennessee 37402
423/756-2221

ARDENA J. GARTH

11th Judicial District Public Defender

By:

[REDACTED]

Assistant District Public Defender
701 Cherry Street
Suite 300
Chattanooga, Tennessee 37402
423/634-6374

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BY 3 D.C.

FOR REPLY: _____

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

* NO. [REDACTED]
*

VS.

* DEATH PENALTY
*

[REDACTED]

* DIVISION [REDACTED]

EX PARTE, SEALED MOTION FOR DEFENSE SERVICES

Comes now the Defendant, through court appointed counsel, and respectfully moves this court for the defense services set out below pursuant to the authority set out in T.C.A. § 40-14-207(b); Tennessee Supreme Court Rule 13(5)(a); Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985), other judicial authority; the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I, Section 8, 9, and 16 of the Tennessee Constitution, and the attached Memorandum of Law and Affidavit of counsel.

The factual basis for the support services requested herein is set out in counsel's Affidavit, attached hereto. The Resume of the proposed investigator was included with the initial request for his services filed with this court and approved on December 2, 1999.

Specifically, the Defendant requests the continued services of the guilt/innocence investigator whose services were approved by this court on December 2, 1999, [REDACTED] of Chattanooga, Tennessee, at a cost of \$65 per hour not to exceed a total cost of \$23,400, plus reasonable and necessary expenses.

The Defendant anticipates that the investigator identified above will be

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(423) 634-6374

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competent and appropriate to adequately prepare the areas identified concerning Defendant's case. If the competency, adequacy or area of expertise of this expert comes into question as the preparation of the case unfolds, counsel for the Defendant will notify the court and seek appropriate relief. The details of the location, time, and place of relevant work to be conducted by the investigator are made known to the court by the attached Affidavit and the cost of any further necessary investigative or expert services or of other necessary expenses will be made known to the court as the need arises. To the extent possible, the details of the anticipated expenditures for the investigator are set out in the attached Affidavit of the Attorney.

Defendant is aware of and will comply with the requirements of Tennessee Supreme Court Rule 13(5)(c) regarding the necessity of obtaining authorization by the chief justice before incurring expenses over \$5,000. This information is offered in compliance with Tennessee Supreme Court Rule 13(5)(a)-(c).

FOR THE FOREGOING REASONS, the Petitioner seeks authorization for the expenditure of funds as set out above on the legal authority and factual basis set out in the attached Memorandum of Law and Affidavit of counsel.

Dated: 7/30/01

Respectfully submitted,

POOLE, THORNBURY, MORGAN & RICHARDSON

[REDACTED]

[REDACTED]

732 Cherry Street
Chattanooga, Tennessee 37402
423/756-2221

ARDENA J. GARTH

11th Judicial District Public Defender

By: _____

Assistant District Public Defender

701 Cherry Street

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IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

* NO. [REDACTED]

*

* DEATH PENALTY

*

*

*

* DIVISION [REDACTED]

/s.

[REDACTED]

AFFIDAVIT

STATE OF TENNESSEE

COUNTY OF HAMILTON

I am, [REDACTED], Assistant Public Defender, and I do solemnly swear and affirm that the following is true to the best of my knowledge, information, and belief:

1. I am a Tennessee attorney in good standing and counsel of record on behalf of [REDACTED] his case now pending before this court in which he is accused of murder in the first degree.

2. The State of Tennessee filed a Notice of Intent to Seek the Death Penalty on February 27, 1987

3. The Defendant was found guilty by a jury of First Degree Murder and sentenced to death on November 21, 1987.

4. On May 30, 1990, Defendant filed a Petition for Post Conviction Relief which was heard and decided in favor of the Defendant in 1998. The State appealed and the Tennessee Court of Criminal Appeals affirmed the decision of the hearing judge on June 17, 1999. Based on the ineffective assistance of counsel received by

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Defendant in both the guilt and sentencing phases of his first trial, his case was remanded to the Criminal Court of Hamilton County, Tennessee, for a new trial.

6. On September 9, 1999, [REDACTED] was appointed to represent the Defendant and the case was continued until September 21, 1999, for the court to make a determination regarding the appointment of additional counsel.

7. On September 23, 1999, Defendant was declared indigent by this court and, in addition to [REDACTED], the Public Defender of the 11th Judicial District was appointed to represent him.

8. On February 11, 2000, the Hamilton County District Attorney General's Office was disqualified from prosecution of this case due to a conflict of interest.

9. On March 7, 2000, [REDACTED] District Attorney General of the [REDACTED] Judicial District was appointed District Attorney General Pro Tern for the prosecution of the case.

**PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE
THAT WARRANT THE AUTHORIZATION OF FUNDS**

10. The Defendant in this case is accused of the shooting death of [REDACTED] on February 14, 1985, for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution.

11. After the murder, [REDACTED] the victim's brother admitted that he and the Defendant had committed a business burglary in 1984 and that his sister, the victim, had discovered his involvement with [REDACTED] in the burglary.

12. [REDACTED] was interviewed shortly after the murder and denied any involvement. He admitted knowing the victim's brother, [REDACTED], and eventually admitted the burglary. He consented to giving hair and body fluid samples and consented to a

search of his home and vehicles. [REDACTED] said he was at home with his parents at the time of the murder.

13. Two years later, after the Defendant had been released on parole from his sentence for the burglary, he made incriminating statements about killing the victim to an undercover police officer. His statements were recorded by the officer using a Nagra audio tape recorder. Three separate tapes were made of conversations with the Defendant over a three week period of time.

14. After his arrest for the murder [REDACTED] was again interrogated by the police. Again he denied over and over his involvement in the murder and told the police he made the statements about the murder to the undercover officer, who was passing himself off as a hit man, in order to court his favor because the officer was providing him with a place to live, alcohol and money. The police admitted during the taped interview to knowing that [REDACTED] had a habit of fabricating stories to make himself look important.

DUTY TO INVESTIGATE THE EVIDENCE

15. The American Bar Association (ABA) Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (February 1989), Guideline 11.4

Investigation. state

16. In addition to what may be considered the normal duties to investigate a case, such as interviewing state's witnesses, defense witnesses, visiting the crime scene and examining physical evidence, the investigation for the 'guilt/innocence' phase of the trial must

seek information giving rise to the charges, and any improper police investigative practice or prosecutorial conduct which affects the client's rights; explore the existence of other potential sources of information relating to the offense, the client's mental state, and the presence or absence of any aggravating factors under the applicable death penalty statute and any mitigating factors . . . Id.

RELIABILITY OF THE TAPE EVIDENCE

17. In our effort to investigate the State's case and to test the state's evidence, we obtained funds in December, 2000, for the services of an expert ———
✱

to examine the audio tape recordings. At the time, we had been told by the State that the original tape recordings had been misplaced or destroyed and were no longer available. The copies of the original tapes which had been submitted into evidence at the original trial of the Defendant were the best evidence available. Those tapes had obvious clicking noises and other suspicious sounds on them. After Mr. Cain had examined those tapes and identified numerous anomalies, I was informed by the

Attorney General Pro Tem [REDACTED] that the original tapes had been found and we would be able to listen to them as soon as a meeting could be arranged with the detective who made the tapes. We informed [REDACTED] of this development and he instructed us on how to make a copy of the tapes which he felt would be suitable for examination.

18. On April 11, 2001, we met with Detective [REDACTED] and listened to the original tapes. Detective [REDACTED] also made copies of the tapes for us in the manner requested by [REDACTED]. We obtained additional funds for [REDACTED] to review those copies and his opinion was that if the same anomalies are on the original tapes as he uncovered on the copies, the tapes " . . . lacked integrity or reliability...". [REDACTED]'s report, attached hereto as Exhibit "A" in the Appendix and hereby made a part hereof, at page 4.) [REDACTED] stressed that before a definitive opinion could be given, however, that the actual Nagra tapes and the same or a similar make and model recorder as the one used to make the tapes must be examined.

19. About three weeks after [REDACTED] gave us his report, he suffered heart problems and had to have bypass surgery. Although he has assured us that his health is improving, [REDACTED] suggested we obtain the services of a second expert to assist him in his examination of the original Nagra tapes and, if [REDACTED] was unable to do so,

to testify at trial. The cost for [REDACTED] continuing on the case with the additional expert was quoted at over \$28,000, excluding testimony. In looking for the additional expert recommended by [REDACTED], it became apparent that the examination of the original tapes could be accomplished by one expert and at a much lesser cost than that quoted by [REDACTED]. From our discussions with [REDACTED], I am afraid his health is not as good as he hoped it to be after his surgery and that he is afraid he will not be able to testify in the case.

20. In support of his argument that the original Nagra tapes must be examined in order to issue a definitive opinion on the reliability of the tape evidence, [REDACTED]. [REDACTED] cited two sources of standards for the examination of the tapes. One is the protocols of the Audio Engineering Society, included in the Appendix at Exhibit "B". The second is a published article written by [REDACTED] former supervisory special agent of the FBI's crime lab tape section, included in the Appendix as Exhibit "C".

21. We have contacted [REDACTED] and reviewed the case with him. [REDACTED] is no longer with the FBI but is a private consultant and is a consultant to the FBI's Crime Lab tape section. His laboratory is just outside of Washington, D.C., in [REDACTED] Virginia. (Please see the Appendix for his affidavit, at Exhibit "D" and CV at Exhibit "E".)

22. We have not found an expert within the state of Tennessee who can examine the original Nagra tapes according to the necessary protocols. I have investigated the qualifications and availability of tape experts other than [REDACTED] and have found none who are available and none who are as qualified to meet the challenges of the particular difficulties of this case as [REDACTED]

CONTINUED SERVICES OF OUR INVESTIGATOR

23. The re-trial of a 16 year old case poses particular problems for the Defense in its investigation. In December, 1999, we obtained funds for the services of [REDACTED]. To serve as our guilt/innocence investigator on this case. Of the 450 hours [REDACTED] estimated he would need for the investigation of this case, he **has** expended 384 hours as of July 28, 2001. Of his original estimates of time requirements in the first request for funding, [REDACTED]'s estimates have been correct with the exception that more time has been spent on investigating chain of custody and reliability of evidence issues than expected. Several of the witnesses who were available for the original trial in 1987 have moved out of state. Mr. [REDACTED] still needs to find and interview three witnesses who he has traced to northern Louisiana, a

witness who now lives in North Carolina and one who lives in Arizona. He has found two key witnesses in the Atlanta area but was unable to interview one in person because the witness had had a medical emergency and the other witness, after talking to [REDACTED] on the telephone, avoided contact with [REDACTED]. Both of those witnesses as well as the other out-of-state witnesses will have to be subpoenaed for trial but I must have more information about their exact locations and potential testimony before I can secure out-of-state subpoenas for them. In addition, additional witnesses that we did not know about at the time of the December, 1999, funding request have been identified in the local area who must be interviewed and subpoenaed for trial.

24. [REDACTED]'s exceptional ability to recall people and documents has proven to be a tremendous asset to the defense team in this case especially since we started the case with 17 bankers boxes of documents from the post conviction attorneys. His services are especially needed for organization for trial preparation and his services will assure that the trial moves in an orderly and efficient manner. We now expect the trial to take a minimum of two weeks.

of-state travel that will be needed as well as the local witnesses who will have to be contacted and whose appearances for trial will have to be coordinated. We have determined we will need at least an additional 360 hours of his time at his hourly rate of \$65 per hour, plus expenses, to get us through the trial. (Please see the original funding request for his services submitted to the trial court and approved on December 2, 1999, for a copy of [redacted]'s CV and fee schedule.)

CONCLUSION

26. For the foregoing reasons, I request that this Court authorize the expenditures requested in the attached motions based on the legal and factual authority set out in the motion, memorandum, and this affidavit with its Appendix.

FURTHER THE AFFIANT SAIETH NOT.

DATE: 30 July 2001

[redacted]

Sworn to and subscribed before me:

[redacted]

Notary Public

on this 30th day of July, 2001.

My commission expires:

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BY 9 D.C.

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IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

* NO. [REDACTED]

*

* DEATH PENALTY

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VS.

*

[REDACTED]

* DIVISION [REDACTED]

MEMORANDUM IN SUPPORT OF EX PARTE SEALED MOTIONS

FOR DEFENSE SERVICES

COMES now the accused, [REDACTED] by and through court appointed counsel, and respectfully shows to this court in support of his *ex parte* sealed motion for defense services as follows:

T.C.A. § 40-14-207(b) provides as follows:

(b) In capital cases where the defendant has been found to be indigent by the court of record having jurisdiction of the case, such court in an *ex parte* hearing may in its discretion determine that investigative or expert services or other similar services are necessary to insure that the constitutional rights of a defendant are properly protected. If such a determination is made, the court may grant prior authorization for these necessary services in a reasonable amount to be determined by the court. The authorization shall be evidenced by a signed order of the court. The order shall provide for the reimbursement of reasonable and necessary expenses by the Executive Secretary of the Supreme

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Court as authorized by this part, and rules promulgated thereunder by the Supreme Court.

Tennessee Supreme Court Rule 13(5)(a) provides as follows:

In the trial . . . of all criminal cases in which the defendant is entitled to appointed counsel . . . , the court in an ex parte hearing may in its discretion determine that investigative or expert services of other similar services are necessary to ensure that the constitutional rights of the defendant are properly protected.

In the case of Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985), the United States Supreme Court stated:

This court has long recognized that when a state brings its judicial powers to bear on an indigent defendant in a criminal proceeding, it must take steps to insure that the defendant has a fair opportunity to present his defense. This elementary principle, grounded in significant part in the Fourteenth Amendment's due process guarantee of fundamental fairness, derives from the belief that justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake. (Emphasis added.) 105 S.Ct. at 1093.

And further:

We recognized long ago that mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process, and that a

criminal trial is fundamentally unfair if the state proceeds against an indigent defendant without making certain that he has access to the raw materials integral in the building of an effective defense. Thus, while the Court has not held that a state must purchase for the indigent defendant all the assistance that his wealthier counterpart might buy, (citation omitted), it has often reaffirmed that fundamental fairness entitles indigent defendants to an adequate opportunity to present their claims fairly within the adversary system (citation omitted)

The private interest in the accuracy of a criminal proceeding that places an individual's life or liberty at risk is almost uniquely compelling. Indeed, the host of safeguards fashioned by this court over the years to diminish the risk of erroneous convictions stands as a testament to that concern. The interest of the individual in the outcome of the state's effort to overcome the presumption of innocence is obvious and weighs heavily in our analysis. (Emphasis added.) 105 S.Ct. 1094.

The Tennessee State Supreme Court, per Justice Cooper, has provided:

There is no question but that an indigent defendant in a criminal prosecution must be provided with the tools of an adequate defense or appeal when these are tools available for a price to other defendants. State v. Elliot, 524 S.W.2d 473, 475 (Tenn. 1975).

The United States Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice (1963) and the American Bar Associations: Standards Relating to Providing Defense Services, Section 1.5

(1968) promulgated similar standards requiring the provision of "investigative, expert, or other services necessary for an adequate defense to the indigent criminal defendant." And see, American Bar Association: Standards for Criminal Justice, Section 5-1.4 (2d ed. 1980).

Also, see ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, Guideline 8.1 and Commentary (approved by ABA on February 7, 1989). Guideline 8.1 provides as follows:

Guideline 8.1-Supporting Services: The legal representation plan for each jurisdiction should provide counsel appointed pursuant to these guidelines with investigative, expert, and other services necessary to prepare and present an adequate defense. These should include not only those services and facilities needed for an effective defense at trial, but also those that are required for effective defense representation at every stage of the proceedings, including the sentencing phase.

The constitutional basis for the support services requested is as follows:

1. The accused in this case has a right to the provision of the support services requested pursuant to the due process clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 8 of the Tennessee Constitution. As a matter of "fundamental fairness," the accused has a right to the requisites of an adequate defense. One who is indigent and cannot afford to purchase the resources for an adequate defense should have necessary resources made available to him by the state. See, Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932); Ake v. Oklahoma, *supra*.

2. The accused has a right to the provision of the support services requested pursuant to the equal protection clause of the Fourteenth Amendment of

2. The accused has a right to the provision of the support services requested pursuant to the equal protection clause of the Fourteenth Amendment of the United States Constitution. See, for example, Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956); Douglas v. California, 372 U.S. 353, 83 S.Ct. 814, 3 L.Ed.2d 811 (1963).

3. The accused has a right to the provision of the support services requested pursuant to the right to the effective assistance of counsel provided in the Sixth Amendment of the United States Constitution and Article I, Section 9 of the Tennessee Constitution. See, for example, Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938); Gideon v. Wainwright, 375 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

4. The accused has a right to the provision of the support services requested pursuant to the right to compulsory process of witnesses pursuant to the Sixth Amendment of the United States Constitution and Article I, Section 9 of the Tennessee Constitution. See, for example, Peole v. Watson, 221 N.Ed.2d 645 (1966). Also, see, United States v. Wade, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967).

The accused's rights to the provision of support services such as investigator, psychologist, and other forensic experts, upon the demonstration of a need, is particularly important in a case in which the state seeks to impose the sentence of death. The United States Supreme Court has continually recognized a heightened standard of due process in capital cases. The Court in Spaziano v. Florida, 468 U.S. 447, 104 S.Ct. 3154, 82 L.Ed.2d 340 (1984), noted:

In the twelve years since Furman v. Georgia . . . , every member of this court has written or joined at least one opinion endorsing the proposition that because of its severity and irrevocability, the death

unique safeguards to insure that it is a justified response to a given offense. 104 S.Ct. at 3167.

Also, in this regard, see, Eddinas v. Oklahoma, 45 US. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982); Gardner v. Florida, 430 U.S. 349, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977); Enmund v. Florida, 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982); and, finally, Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976), in which the court stated:



. . . death, in its finality, differs more from life imprisonment than a one hundred year prison term differs from one of only a year or two.

FOR THE FOREGOING REASONS, the accused respectfully requests that this court authorize funds necessary to provide the support services requested in order that the accused may be able to prepare and present an adequate defense.

Dated: 30 July 2001

Respectfully submitted,

POOLE, THORBURY, MORGAN & RICHARDSON



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Chattanooga, Tennessee 37402
423/756-2221

ARDENA J. GARTH

11th Judicial District Public Defender

By: _____

Assistant District Public Defender

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APPENDIX

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- A. Report of [REDACTED], June 1, 2001

- B. Audio Engineering Society Standard for Forensic Purposes — Criteria for the Authentication of Analog Audio Tape Recordings

- C. [REDACTED], "Authentication of Forensic Audio Recordings," Journal of the Audio Engineering Society Audio/Acoustics/Applications, January/February, 1990.

- D. Affidavit of [REDACTED]

- E. Curriculum Vitae of [REDACTED]

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IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

• NO. [REDACTED]

■

* DEATH PENALTY

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* DIVISION+

JS.

[REDACTED]

**O R D E R ESTABLISHING PROCEDURES TO ENABLE THE
EXAMINATION OF AUDIO TAPES AND RELATED EQUIPMENT BY THE
DEFENSE**

This matter came on to be heard on the 22nd day of August, 2001, on Defendant's Ex Parte Motion for Services, on the sealed documents attached hereto, on the testimony of witnesses during the ex parte hearing on said Motion, and on the record as a whole, from all of which the Court finds that pursuant to the authority set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5); the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution and because of the exceptional nature of this case, as a case in which the State seeks the penalty of death and in which the defendant has been declared indigent by this court, it is hereby

ORDERED that the Chattanooga Police Department shall deliver to Edna Camp, Chief Deputy Clerk of the Hamilton County Criminal Court, or her designee, at the office of the Hamilton County Criminal Court Clerk at 9:00 a.m. on September 5, 2001, the following items:

OFFICE OF DISTRICT PUBLIC DEFENDER
ARDENA J. GARTH
701 Cherry Street, Suite 300
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(423) 634-6374

1829

1. the original Nagra audio tape recordings of conversations between the Defendant and Detective ██████████ recorded on February 9, 1987; February 11, 1987; and, February 17, 1987
2. the Nagra tape recorder and related components, i.e., microphones, switching devices and any other accessories used to make each of the recordings requested in item #1, or, if an exact piece of equipment is not available, comparable equipment may be substituted with a written explanation of which piece of equipment is being substituted and why;
3. a DSP monitor (monitor and expander designed for playback) and any related components designed to enable listening to the tapes;

It is further

ORDERED that the Chattanooga Police Department representative shall play the tapes in the presence of a representative of the Criminal Court Clerk's Office and a representative of Defendant's defense attorneys in order to assure all concerned that the tapes and the equipment are complete and in good working order prior to leaving them in the Clerk's office. It is further

ORDERED that the representative of the Chattanooga Police Department shall package the tapes and the equipment, taking whatever precautions the representative deems necessary for the safe delivery of the items, for FedEx shipment to the defense expert. It is further

ORDERED that the Clerk's office representative shall ship the items to the address designated by the defense representative. It is further

ORDERED that when the items are returned to the Clerk's office that this procedure shall be repeated in order to assure all parties that the items have been returned in the same condition in which they were delivered to the Clerk's office. The items shall not be returned to the Chattanooga Police Department or to any agency of the State until this procedure has been followed. It is further

ORDERED that the Defendant's attorneys shall pay any costs associated with the shipment of the items.

ENTER this 22nd day of August, 2001.


JUDGE

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

* NO. [REDACTED]

* DEATH PENALTY

VS.

*

■

* DIVISION —

[REDACTED]

SEALED ORDER

FOR

EXPERT SERVICES

This matter came on to be heard on the 30th day of July, 2001, at an *ex parte* hearing on Defendant's Motion for Expert Services, on the Memorandum of Law attached thereto, on the Affidavit of counsel attached thereto, with attachments, and on the record as a whole, from all of which the Court finds that whether the tape recorded statements made by the Defendant to an undercover police officer have been altered or tampered with is an issue during the guilt-innocence determination of this case and the Defendant has demonstrated a particularized need for examination of the actual tapes and the expertise of a person trained in the examination of Nagra audic tapes for evidence of tampering and the Defendant is entitled to the services requested pursuant to the authority set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5); Ako v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985); the Sixth, Eight, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution.

OFFICE OF DISTRICT PUBLIC DEFENDER
ARDENA J. GARTH
701 Cherry Street, Suite 300
Chattanooga, Tennessee 37402
(423) 634-6374

THE FOLLOWING INSTRUMENT IS A
CORRECT COPY OF THE ORIGINAL ON
FILE IN THE OFFICE
THIS July 31, 2001

GWEN TIDWELL
Criminal Court Clerk

BY [Signature]

The Court further finds the Defendant is charged with First Degree Murder and may face a sentence of death if convicted and the Defendant is indigent and cannot afford the services requested.

The Court further finds the Defendant has complied with the requirements of Rule 13, Sec. 5 of the Rules of the Tennessee Supreme Court by setting forth the name and location of the laboratory and the expert that will provide the services, the means and date, time and location at which the services are to be provided, a statement of the itemized costs of the services and the amount of any expected additional or incidental costs.

The Court further finds the costs specified by [REDACTED] of [REDACTED] Virginia, for examination of the tapes and consultation with Defense attorneys are reasonable for the type of services to be performed under the circumstances of this case.

The Court further finds out-of-state services are necessary in this case because comparable services are not available to the defense in Tennessee and the rate of \$18 per hour for examination of the tapes and for consultation with Defendant's attorneys and report preparation is a good and reasonable rate for the services of a qualified expert in this field.

The Court further finds these services are necessary to assure the Defendant a full and fair trial of his case and to protect the State and Federal constitutional rights of the Defendant. Therefore, it is hereby

ORDERED that [REDACTED] of [REDACTED] Virginia, be and hereby is appointed to conduct a complete examination of the original Nagra audit tapes of conversations between the Defendant and an undercover officer and to consult with Mr. [REDACTED]'s defense attorneys regarding the results and prepare a written

report if necessary at a cost of \$185 per hour not to exceed a total of \$12,300, plus reasonable and necessary expenses, It is further

ORDERED that photographic and shipping expenses of up to \$400 per tape is a reasonable and necessary expense associated with an examination and analysis of Nagra audio tapes and upon submission of actual invoices those expenses also will be paid to Mr. [REDACTED] up to \$1,200. It is further

ORDERED that Defendant will seek any necessary prior approval from the chief justice pursuant to Tennessee Supreme Court Rule 13(5).

ENTER this 31st day of July, 2001.

[REDACTED]
JUDGE

APPROVED
[Signature]
CHIEF JUSTICE

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

* NO. [REDACTED]

*

• DEATH PENALTY

*

*

* DIVISION [REDACTED]

/s.

[REDACTED]

SEALED ORDER

FOR

EXPERT SERVICES

This matter came on to be heard on the 5th day of June, 2001, at an *ex parts* hearing on Defendant's Motion for **Expert Services**, on the Memorandum of Law previously filed in this matter, on the Affidavit of counsel **attached** thereto, with **attachments**, and on the record **as** a whole, from all of which the Court finds that the **Defendant has** demonstrated a **particularized** need for the **services** of an experienced forensic pathologist and **the** Defendant **is** entitled to the **services requested** pursuant to the authority set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5); McCoy v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985); the Sixth, Eighth, and Fourteenth Amendments **to the** United States *Constitution*, **and Article I, Sections 8, 9, and 16 of** the Tennessee Constitution.

The Court further finds the Defendant is charged with First Degree **murder** and may face a **Sentence of** death if convicted and **the** Defendant is indigent and cannot afford the **services** requested.

The Court further finds the Defendant has complied with the requirements of Rule 13, Sec. 5 of the Rules of the Tennessee Supreme Court by setting forth the

FILED IN OFFICE

JUN -5 AM 9:14

GWEN TIDWELL, CLERK

BY _____ D.C.

FILE REF: _____

OFFICE OF DISTRICT PUBLIC DEFENDER
ARDENA J. GARTH
701 Cherry Street, Suite 300
Chattanooga, Tennessee 37402
423-633-0324

name and the location of the forensic pathologist and the means and date, time and location at which the services are to be provided, a statement of the itemized costs of the services and the amount of any expected additional of incidental costs.

The Court further finds the costs specified by [REDACTED], M.D., Director of Forensic Medicine, Medicolegal Investigation Unit, New York State Police for the specific services to be provided are reasonable for the type of services to be performed under the circumstances of this case.

The Court further finds out-of-state services are necessary in this case because comparable services by a person of Dr. [REDACTED] expertise are not available to the defense in Tennessee and the rate of \$250 per hour for said services is a good and reasonable rate for the services of a qualified expert in this field.

The Court further finds these services are necessary to assure the Defendant a full and fair trial of his case and to protect the State and Federal constitutional rights of the Defendant. Therefore, it is hereby

ORDERED that [REDACTED], M.D., be and hereby is appointed to assist the defense in this case and to provide services pre-trial as set out in the attorney's affidavit which is attached hereto at a cost not to exceed \$3,750, plus reasonable and necessary expenses. It is further

ORDERED that Defendant will seek any necessary prior approval from the chief justice pursuant to Tennessee Supreme Court Rule 13 (5).

THE FOREGOING INSTRUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL NOW ON FILE IN MY OFFICE

Date June 5, 2001 ENTER this 5th day of June, 2001.

GEN TIDWELL, Criminal Court Clerk

B. Tidwell FILED IN OFFICE

01 JUN 05 AM 9:14
GEN TIDWELL, CLERK
Y. _____ D.C.
M REF: _____

[REDACTED]
JUDGE **APPROVED**
[Signature]
CHIEF JUSTICE

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE:

STATE OF TENNESSEE

* NO. [REDACTED]

* DEATH PENALTY

VS.

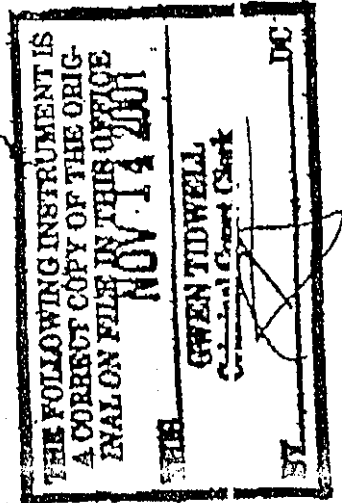
* DIVISION [REDACTED]

[REDACTED]

SEALED ORDER

FOR

EXPERT SERVICES



This matter came on to be heard on the 14th day of November, 2001, at an *ex parte* hearing on Defendants Motion for Expert Services, on the Memorandum of Law previously filed in this matter, on the Affidavit of counsel attached thereto, with attachments, and on the record as a whole, from all of which the Court finds that the Defendant has demonstrated a particularized need for the continued services of an *experienced forensic scientist* and the Defendant is entitled to the services requested pursuant to the authority set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5); Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985); the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution.

The Court further finds the Defendant is charged with First Degree Murder and may face a sentence of death if convicted and the Defendant is indigent and cannot afford the services requested.

The Court further finds the Defendant has complied with the requirements of Rule 13, Sec. 5 of the Rules of the Tennessee Supreme Court by setting forth the name and the location of the forensic scientist and the means and date, time and location at which the services are to be provided, a statement of the itemized costs of the services and the amount of any expected additional or incidental costs.

OFFICE OF DISTRICT PUBLIC DEFENDER
 ARDENA J. GARTI
 701 Cherry Street, Suite 300
 Chattanooga, Tennessee 37402
 (423) 634-6174

The Court further finds the costs specified by [REDACTED] Ph.D., Professor of Criminalistics, Department of Sciences, John Jay College of Criminal Justice, City University of New York, N.Y., for the specific services to be provided are reasonable for the **types of services to be performed** under the circumstances of this case.

The Court further finds out-of-state services are necessary in this case because comparable services by a person of Dr. [REDACTED] expertise are not available to the defense in Tennessee and the rate of \$250 per hour for said services is a good and reasonable rate for the services of a qualified expert in this field.

The Court further finds these services are necessary to assure the Defendant a full and fair trial of his case and to protect the State and Federal constitutional rights of the Defendant. Therefore, It is hereby

ORDERED that [REDACTED] Ph.D., Professor of Criminalistics, Department of Sciences, John Jay College of Criminal Justice, City University of New York, N.Y., be and hereby is appointed to continue to assist the defense in this case as a forensic scientist and to provide services as set out in the attorney's affidavit which is attached hereto at a cost not to exceed an additional \$8,000, plus reasonable and necessary expenses including travel expenses. This fee is in addition to the fee of \$6,000 previously authorized by this Court on June 5, 2001. It is further

ORDERED that Defendant will seek any necessary prior approval from the chief justice pursuant to Tennessee Supreme Court Rule 13 (5).

ENTER this 14th day of November, 2001.

APPROVED
[Signature]
CHIEF JUSTICE

[REDACTED]
[Signature]

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

* NO. [REDACTED]

*

* DEATH PENALTY

*

VS.

[REDACTED]

*

* DIVISION [REDACTED]

SEALED ORDER

FOR

EXPERT SERVICES

This matter came on to be heard on the 22nd day of August, 2001, at an *ex parte* hearing on Defendant's Motion for Expert Services on the Memorandum on Law previously filed in this matter, on the Affidavit of counsel attached thereto, with attachments, and on the record as a whole, from all of which the Court finds that whether there is DNA evidence which would exclude the Defendant in the fingernail scrapings taken from the victim at the time of autopsy will be an issue during the guilt-innocence determination of this case and the Defendant has demonstrated a particularized need for expert DNA analysis and examination of the victim's fingernail scrapings and for consultation with a person trained in DNA analysis and the Defendant is entitled to the services requested pursuant to the authority set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5); Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985); the Sixth, Eight, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution.

OFFICE OF DISTRICT PUBLIC DEFENDER
ARDENA J. GARTH
701 Cherry Street, Suite 100
Chattanooga, Tennessee 37402
(423) 634-6374

The Court further finds the Defendant is charged with First Degree Murder and may face a sentence of death if convicted and the Defendant is indigent and cannot afford the services requested.

The Court further finds the Defendant has complied with the requirements of Rule 13, Sec. 5 of the Rules of the Tennessee Supreme Court by setting forth the name and location of the laboratory and the expert that will provide the services, the means and date, time and location at which the services are to be provided, a statement of the itemized costs of the services and the amount of any expected additional or incidental costs.

The Court further finds the costs specified by [REDACTED] of [REDACTED] Richmond, California, for DNA analysis of the fingernail scrapings and consultation with Defense attorneys are reasonable for the type of services to be performed under the circumstances of this case.

The Court further finds out-of-state services are necessary in this case because comparable services are not available to the defense in Tennessee and the rate of \$175 per hour for DNA analysis and for consultation with Defendant's attorneys and report preparation is a good and reasonable rate for the services of a qualified expert in this field.

The Court further finds these services are necessary to assure the Defendant a full and fair trial of his case and to protect the State and Federal constitutional rights of the Defendant. Therefore, It is hereby

ORDERED that, [REDACTED] of [REDACTED], Richmond, California, be and hereby is appointed to conduct a DNA analysis of the fingernail scrapings of the victim and to consult with Mr. [REDACTED]'s defense attorneys regarding the results and prepare a written report if necessary at a cost of \$175 per,

hour not to exceed a total of \$6,000, plus reasonable and necessary expenses, it further

ORDERED that Defendant will seek any necessary prior approval from the chief justice pursuant to Tennessee Supreme Court Rule 13 (5).

ENTER this 22nd day of August, 2001.

JUDGE [REDACTED]

APPROVED
[Signature]
CHIEF JUSTICE

RECORDED
INDEXED
AUG 22 2001

[Signature]
[Seal]

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

NO. [REDACTED]

DEATH PENALTY

VS.

[REDACTED]

DIVISION [REDACTED]

SEALED ORDER

FOR

EXPERT SERVICES

This **matter** came on to be heard on the 12th day of February, 2002, at an **ex parte** hearing on Defendants **Motion** for **Expert Services**, on the Memo'andum of **Law** related thereto and previously filed in **this** matter, on the Affidavit of **counsel** with **attachments**, attached thereto, and on the record as a whole, from all of which the **Court** finds that Defendant's addiction to alcohol is likely to be an issue during both the guilt-innocence determination and the sentencing phase of **this case** and the Defendant has demonstrated a particularized need for the **assistance** of a medical **doctor** trained in addiction medicine and is entitled to the **services** requested pursuant to the authority set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5); Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985); the Sixth, Eight, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution.

The Court further **finds the Defendant** is charged with First Degree **Murder** and may **face a sentence of death** if convicted and the Defendant is **Indigent** and cannot **afford** the **services** requested.

OFFICE OF DISTRICT PUBLIC DEFENDER
ARDENA J. GARTH
701 GIBNEY STREET, SUITE 400
CHATTANOOGA, TENNESSEE 37402
615 634 0174

The Court further finds the Defendant has complied with the requirements of Rule 13, Sec. 5 of the Rules of the Tennessee Supreme Court by setting forth the name and location of the person who will provide the services, the means and date, time and location at which the services are to be provided, a statement of the itemized costs of the services and the amount of any expected additional or incidental costs.

The Court further finds the costs specified by Dr. [REDACTED] are reasonable for the type of services to be performed under the circumstances of this case.

The Court further finds these services are necessary to assure the Defendant a full and fair trial of his case and to protect the State and Federal constitutional rights of the Defendant, Therefore, It is hereby

ORDERED that [REDACTED] M.D., of Nashville, Tennessee, be and hereby is appointed to conduct an evaluation of the Defendant and to do all things necessary to assist the Defense in preparation and trial of this matter and that the State of Tennessee shall pay him a fee at the rate of \$150 per hour portal to portal for all out of court services and \$250 per hour portal to portal for all court appearances, not to exceed a total of \$5,000 unless this order is amended by this Court, plus reasonable and necessary travel and out-of-pocket expenses. It is further

ORDERED that Defendant will seek any necessary prior approval from the chief justice pursuant to Tennessee Supreme Court Rule 13 (5).

ENTER this 12th day of February, 2002.

APPROVED
 [Signature]
 CHIEF JUSTICE

FILED IN OFFICE

12 FEB 12 AM 10:00

GWEN TIDWELL, CLERK

BY _____ D.C.

FILED IN OFFICE

THE COURT
 A COURT
 JUDGE
FEB 12 2002
 GWEN TIDWELL
 Criminal Court Clerk
 BY [Signature] DC

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

* NO. [REDACTED]

* DEATH PENALTY

VS.

[REDACTED]

* DIVISION [REDACTED]

SEALED ORDER

FOR

EXPERT SERVICES

This matter came on to be heard on the 5th day of June, 2001, at an *ex parte* hearing on Defendant's Motion for **Expert Services**, on the Memorandum of Law previously filed in this matter, on the Affidavit of counsel **attached** thereto, with attachments, **and** on the record **as** a whole, from all of which the Court finds that the **Defendant** has **demonstrated** a particularized need for the services of an experienced forensic pathologist and the Defendant is *entitled* to the **services requested** pursuant to the authority set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5)) Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985); the Sixth, Eighth and Fourteenth Amendments to *the* United States Constitution, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution.

The Court further finds the Defendant is charged with First Degree Murder and may face a **sentence** of death if **convicted** and the Defendant is indigent and cannot afford **the** services requested.

The Court further finds the Defendant has complied with the requirements of Rule 13, Sec. 5 of the Rules of *the* Tennessee Supreme Court by setting forth the

FILED IN OFFICE

JUN -5 AM 9:14

SHEN TIDWELL, CLERK
BY _____ D.C.
FILE REF: _____

OFFICE OF DISTRICT PUBLIC DEFENDER
ARDENA J. GARTH
701 Cherry Street, Suite 300
Chattanooga, Tennessee 37402
423-554-0374

name and the location of the forensic pathologist and the means and date, time and location at which the services are to be provided, a statement of the itemized costs of the services and the amount of any expected additional or incidental costs.

The Court further finds the costs specified by [REDACTED] M.D., Director of Forensic Medicine, Medicolegal Investigation Unit, New York State Police for the specific services to be provided are reasonable for the type of services to be performed under the circumstances of this case.

The Court further finds out-of-state services are necessary in this case because comparable services by a person of Dr. [REDACTED]'s expertise are not available to the defense in Tennessee and the rate of \$250 per hour for said services is a good and reasonable rate for the services of a qualified expert in this field.

The Court further finds these services are necessary to assure the Defendant a full and fair trial of his case and to protect the State and Federal constitutional rights of the Defendant. Therefore, It is hereby

ORDERED that [REDACTED], M.D., be and hereby is appointed to assist the defense in this case and to provide services pre-trial as set out in the attorney's affidavit which is attached hereto at a cost not to exceed \$3,750, plus reasonable and necessary expenses. It is further

ORDERED that Defendant will seek any necessary prior approval from the chief justice pursuant to Tennessee Supreme Court Rule 13 (5).

THE FOREGOING INSTRUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL NOW ON FILE IN MY OFFICE

Date June 5, 2001 ENTER this 5th day of June, 2001.

JON TIDWELL, Criminal Court Clerk

FILED IN OFFICE

JUN 5 2001

JON TIDWELL, CLERK

BY _____ D.C.

NUM BEF: _____

[REDACTED]
JUDGE APPROVED
[Signature]
CHIEF JUSTICE

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

* NO. [REDACTED]

* DEATH PENALTY

VS.

[REDACTED]

* DIVISION [REDACTED]

SEALED ORDER

FOR

EXPERT SERVICES

This matter came on to be heard on the 20th day of October, 2000, at an ex parte hearing on Defendant's Motion for Expert Services, on the Memorandum of Law attached thereto, on the Affidavit of counsel attached thereto. the complete appendix attached thereto including affidavits and resumes, and on the record as a whole, from all of which the Court finds that Defendant's mental condition is likely to be an issue during both the guilt-innocence determination and the sentencing phase of this case and the Defendant has demonstrated a particularized need for the assistance of a neuropsychologist and is entitled to the services requested pursuant to the authority set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5); Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985); the Sixth, Eight, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution.

The Court further finds the Defendant is charged with First Degree Murder and may face a sentence of death if convicted and the Defendant is indigent and cannot afford the services requested.

The Court further finds the Defendant has complied with the requirements of Rule 13, Sec. 5 of the Rules of the Tennessee Supreme Court by setting forth the name and location of the person who will provide the services, the means and date, time and location at which the services are to be provided, a statement of the itemized costs of the services and the amount of any expected additional or incidental costs.

The Court further finds the costs specified by Dr. [REDACTED] are reasonable for the type of Services to be performed under the circumstances of this case.

OFFICE OF DISTRICT PUBLIC DEFENDER
ARDENA J. GARTH
701 Cherry Street, Suite 300
Chattanooga, Tennessee 37402
(423) 634-6374

The Court further finds these services are necessary to assure the Defendant a full and fair trial of his case and to protect the State and Federal constitutional rights of the Defendant. Therefore, It is hereby

ORDERED that clinical neuropsychologist [REDACTED] Ph.D., be and hereby is appointed to conduct a neuropsychological evaluation of the Defendant and to do all things necessary to assist the Defense in preparation and trial of this matter and that the State of Tennessee shall pay her a fee at the rate of \$120 per hour portal to portal for all out of court services and \$150 per hour portal to portal for all court appearances, not to exceed a total of \$5,000, unless this order is amended by this Court, plus reasonable and necessary travel and out-of-pocket expenses. It is further

ORDERED that Defendant will seek any necessary prior approval from the chief justice pursuant to Tennessee Supreme Court Rule 13 (5).

ENTER this 20th day of October, 2000

[REDACTED]
JUDGE

FILED IN OFFICE

00 OCT 20 AM 11:43

OWEN TIDWELL, CLERK

BY 2 D.C.

FILM REF: _____

IN THE CRIMINAL COURT OF HAMILTON COUNN. TENNESSEE

STATE OF TENNESSEE

• NO. [REDACTED]

• DEATH PENALTY

VS.

[REDACTED]

• DIVISION [REDACTED]

SEALED ORDER

FOR

EXPERT SERVICES

This matter came on to be heard on the 20th day of October, 2000, at an *ex parte* hearing on Defendant's Motion for Expert Services, on the Memorandum of Law anached thereto, on the Affidavit of counsel attached thereto. the complete appendix attached thereto including affidavits and resumes, and on the record as a whole, from all of which the Coun finds that Defendant's mental condition is likely to be an issue during both the guilt-innocence determination and the sentencing phase of this case and me Defendant has demonstrated a particularized need for me assistance of a forensic psychiatrist and is entitled to the services requested pursuant to the authority set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5); Ake v. Oklahoma 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985); the Sixth, Eight, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution.

The Court funher finds the Defendant is charged with First Degree Murder and may face a sentence of death if convicted and the Defendant is indigent and cannot afford the services requested.

The Court further finds the Defendant has complied with the requirements of Rule 13, Sec. 5 of the Rules of the Tennessee Supreme Court by setting fonh the name and location of the person who will provide me services, the moans and dale, time and location at which the services are to be provided, a statement of the itemized costs of the services and the amount of any expected additional or incidental costs.

The Coun further finds Me costs specified by Dr. [REDACTED] are reasonable for the type of services to be performed under the circumstances of this case.

OFFICE OF DISTRICT PUBLIC DEFENDER
ARDENA J. GARTH
701 Cherry Street, Suite 300
Chattanooga, Tennessee 37402
(423) 634-6374

The Court further finds **these services are** necessary to assure the Defendant a full and fair trial of his **case** and to protect the State and Federal constitutional rights of the Defendant. Therefore, it is hereby

ORDERED that forensic psychiatrist [REDACTED], M.D. be and hereby is appointed to conduct a forensic psychiatric evaluation of the Defendant and to do things necessary to assist the Defense in preparation and trial of this matter and that the State of Tennessee shall pay him a fee at the rate of \$250 per hour portal to portal for all out of court services and \$300 per hour portal to portal for all court appearances, not to exceed a total of \$10,000, unless this order is amended by this Court, plus reasonable and necessary travel and out-of-pocket expenses. It is further

ORDERED that Defendant will seek any necessary prior approval from the chief justice pursuant to Tennessee Supreme Court Rule 13 (5).

ENTER this 20th day of October, 2000.

[REDACTED]
JUDGE

APPROVED

CHIEF JUSTICE

FILED IN OFFICE

OCT 20 AM 11:45

WREN TIBWELL, CLERK

BY _____ D.C.

FILM REF: _____

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

• NO. [REDACTED]

* DEATH PENALTY

vs.

• DIVISION [REDACTED]

SEALED ORDER

FOR

EXPERT SERVICES

This matter came on to be heard on the 7th day of October, 2000, at an *ex parte* hearing on Defendant's Motion for Expert Services, on the Memorandum of Law attached thereto, on the Affidavit of counsel attached thereto, with attachments, and on the remrd as a whole. from all of which the Court finds that whether a hair allegedly found inside the victim's car is Defendant's hair is likely to be an issue during the guilt-innocence determination of this case and the Defendant has demonstrated a particularized need for mitochondrial DNA testing and the expertise of a person trained in the analysis of mitochondrial tests and is entitled to the services requested pursuant to the authority set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5); Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985); the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution.

The Court further finds the Defendant is charged with First Degree Murder and may face a sentence of death if convicted and the Defendant is indigent and cannot afford the services requested.

The Court further finds the Defendant has complied with the requirements of Rule 13, Sec. 5 of the Rules of the Tennessee Supreme Court by setting forth the name and location of the laboratory and the expert that will provide the services, the means and date, time and location at which the services are to be provided, a statement of the itemized costs of the services and the amount of any expected additional or incidental costs.

The Court further finds the costs specified by Dr. [REDACTED] and [REDACTED] for mitochondrial DNA testing and analysis of hair

OFFICE OF DISTRICT PUBLIC DEFENDER
ARDENA J. CARTER
701 Cherry Street, Suite 300
Chattanooga, Tennessee 37402
(423) 634-6374

evidence are reasonable for the type of services to be performed under the circumstances of this case.

The Court further finds out-of-state services are necessary in this case because comparable services are not available to the defense in Tennessee and the rates, \$4,000 for mitochondrial DNA testing and analysis and \$200 per hour for consultation and report preparation are good and reasonable rates for the services of a qualified laboratory and expert in this field.

The Court further finds these services are necessary to assure the Defendant a full and fair trial of his case and to protect the State and Federal constitutional rights of the Defendant. Therefore, it is hereby

ORDERED that Dr. [REDACTED] and [REDACTED] be and hereby are appointed to conduct a complete mitochondrial DNA analysis of one questioned sample and a complete mitochondrial DNA analysis of one reference sample at a cost not to exceed \$4,000. It is further

ORDERED that Dr. [REDACTED] shall be paid an additional fee of \$200 per hour, not to exceed a total of \$1,000, plus reasonable and necessary expenses other than travel, for preparation of a report and for consultation with attorneys, unless this order is amended by this Court. It is further

ORDERED that Defendant will seek any necessary prior approval from the chief justice pursuant to Tennessee Supreme Court Rule 13 (5).

ENTER this 20th day of October, 2000

[REDACTED]
JUDGE

APPROVED

[Signature]
CHIEF JUSTICE

FILED IN OFFICE

OCT 20 AM 11:47

EWEN TIDWELL, CLERK

BY _____ D.C.

FILM REF: _____

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

NO. [REDACTED]

DEATH PENALTY

VS.

[REDACTED]

DIVISION [REDACTED]

Received

DEC - 4 2000

TN Supreme Court
Admin. Office of the Court

SEALED ORDER

FOR

EXPERT SERVICES

This matter came on to be heard on the 1st day of December, 2000, at an *ex parte* hearing on Defendant's Motion for Expert Services. on the Memorandum of Law attached thereto, on the Affidavit of counsel attached thereto, with attachments. and on the record as a whole, from all of which the Court finds that the Defendant has demonstrated a particularized need for the services of an experienced jury consultant and the Defendant is entitled to the services requested pursuant to the authority set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5); Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985); the Sixth, Eight, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution.

The Court further finds the Defendant is charged with First Degree Murder and may face a sentence of death if convicted and the Defendant is indigent and cannot afford the services requested.

The Court further finds the Defendant has complied with the requirements of Rule 13, Sec. 5 of the Rules of the Tennessee Supreme Court by setting forth the name and the location of the jury consultant and the means and date, time and location at which the services are to be provided, a statement of the itemized costs of the services and the amount of any expected additional or incidental costs.

The Court further finds the costs specified by [REDACTED] of Jury Services, Inc., for the specific services to be provided are reasonable for the type of services to be performed under the circumstances of this case.

The Court further finds out-of-state services are necessary in this case because comparable services by a person of [REDACTED]'s expertise are not available to the

OFFICE OF DISTRICT PUBLIC DEFENDER
ANDENA J. GARTH
701 Cherry Street, Suite 300
Chattanooga, Tennessee 37402
(423) 634-6374
Fax: (423) 634-6378

defense in Tennessee and the rate of \$100 per hour for said **services** is a good and reasonable rate for the services of a qualified **expert** in this field.

The Court further finds these services are necessary to assure the Defendant a full and fair trial of his case and to **protect** the State and Federal constitutional rights of the Defendant. Therefore, It is hereby

ORDERED that [REDACTED] of [REDACTED], be and hereby is appointed to **serve as** a jury consultant to the defense on this case and to provide services as set out in her affidavit which is attached hereto at a cost not to exceed \$20,000, plus reasonable and necessary expenses including travel expenses. It is further

ORDERED that Defendant will seek any necessary prior approval from the chief justice pursuant to Tennessee Supreme Court Rule 13 (5).

ENTER this 1st day of December, 2000.

JUDGE [REDACTED]

APPROVED
[Signature]
CHIEF JUSTICE

↑
SIGN HERE

OFFICE OF DISTRICT PUBLIC DEFENDER
ARDENA J. GARCIA
701 Cherry Street, Suite 300
Chattanooga, Tennessee 37402
(423) 624-6374

THE FOREGOING INSTRUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL NOW ON FILE IN MY OFFICE

Date Dec 6, 2000

JEN TEDWELL, Criminal Court Clerk

[Signature]

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

* NO [REDACTED]

* DEATH PENALTY [REDACTED]

VS.

[REDACTED]

* DIVISION [REDACTED] MAR - 2 2001

SEALED ORDER

FOR

EXPERT SERVICES

This matter came on to be heard on the 21st day of February, 2001, at an *ex parte* hearing on Defendant's Motion for Expert Services. on the Memorandum of Law previously filed in this matter on December 2, 1999, on the Affidavit of counsel and the Affidavit of [REDACTED] attached thereto and made a pan thereof. and on the record as a whole, from all of which the Court finds.

Defendant *is* entitled to the services requested pursuant to the *authority* set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5). Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985), the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution: and.

These funds are necessary to protect the State and Federal constitutional rights of the Defendant; and. ✓

The funds are necessary to assure Defendant a full and fair trial of this matter; and.

The rate of \$65 per hour is reasonable for the services of a mitigation specialist. Therefore, it is hereby ✓

OFFICE OF THE CLERK OF THE COURT
ARDENA J. GARTH
301 HERRY STREET, SUITE 300
HAMILTON, TENNESSEE 37601
615-638-6074

ORDERED ~~that~~ _____ Ph.D., ~~be~~ and hereby is appointed to complete a final mitigation analysis of this case and to continue to assist the Defense as a mitigation specialist in preparation for the trial of this matter and that the State of Tennessee shall pay him a fee at the rate of \$65.00 per hour for his services, not to exceed a total of \$22,750.00, unless this order is amended by this Court, plus reasonable and necessary expenses. This is in addition to the previously authorized fee of \$8,100.00. It is further

ORDERED that Defendant will seek the necessary prior approval from the chief justice pursuant to Tennessee Supreme Court Rule 13(5)(c).

ENTER this 21st day of February, 2001.


JUDGE

APPROVED

CHIEF JUSTICE

THE FOREGOING INSTRUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL NOW ON FILE IN MY OFFICE

date FEB 21 2001

JEN TIDWELL, Criminal Court Clerk



IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

* NO. [REDACTED]
* DEATH PENALTY

/S.

[REDACTED]

* DIVISION [REDACTED]

MAY 6 2001

SEALED ORDER

FOR

EXPERT SERVICES

This matter came on to be heard on the 26th day of April, 2001, at an *ex parte* hearing on Defendant's Motion for Expert Services, on the Memorandum of *law* attached thereto, on the Affidavit of counsel attached thereto, the complete appendix attached thereto including affidavits and resumes, and on the record as a whole, from all of which the Court finds that Defendant's mental condition is likely to be an issue during both the guilt-innocence determination and the sentencing phase of this case and the Defendant has demonstrated a particularized need for the assistance of a forensic psychiatrist and is entitled to the services requested pursuant to the authority set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5); Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985); the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution.

The Court further finds the Defendant is charged with First Degree Murder and may face a sentence of death if convicted and the Defendant is indigent and cannot afford the services requested.

The Court further finds the Defendant has complied with the requirements of Rule 13, Sec. 5 of the Rules of the Tennessee Supreme Court by setting forth the name and location of the person who will provide the services, the means and date,

OFFICE OF DISTRICT PUBLIC DEFENDER
ARDENA J. GARTH
201 CHERRY STREET, SUITE 300
CHATTANOOGA, TENNESSEE 37402
423-263-6774

time and location at which **the services are to be provided.** a statement of the itemized costs **of the services** and the amount of any expected **additional or incidental costs.**

The Court further finds *the costs* specified by Dr. [REDACTED] are reasonable or the type of **services to be performed** under **the** circumstances of this case.

The Court further **finds** these services are necessary **to** assure the Defendant a full and fair trial of his case and to protect the State and Federal constitutional rights of the Defendant. Therefore, **It is hereby**

ORDERED that forensic psychiatrist [REDACTED], **M.D., be** and hereby **s** appointed *to* continue *the* forensic psychiatric evaluation of the Defendant previously **authorized** by **this** Court on October 20, 2000, and to **do** all things necessary to assist the Defense in preparation and trial of this **matter** and that the **State of** Tennessee shall **pay** him a fee in addition to the fee of **\$10,000** previously authorized by this Court, at the **rate** of \$250 per hour **portal** to portal for all *out of court* **services** and \$300 per hour **portal to portal** for all court appearances, not to exceed a total **of** an additional **\$10,000**, unless this order **is** amended by this Court, **plus** reasonable **and necessary** travel and out-of-pocket expenses. It is further

ORDERED that Defendant will **seek** any necessary prior approval from the chief justice pursuant *to* Tennessee Supreme Court Rule 13 (5).

ENTER this 26th ~~May~~ of April, 2001.

THE FOREGOING INSTRUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL NOW ON FILE IN MY OFFICE

date

APR 26 2001

JENNIFER TIDWELL, Criminal Court Clerk

[Signature]

JUDGE

[REDACTED]

APPROVED
[Signature]
CHIEF JUSTICE

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE

* NO. [REDACTED]

*

* DEATH PENALTY

*

*

VS.

* DIVISION [REDACTED]

SEALED ORDER

FOR

EXPERT SERVICES

This matter will on to be heard on the ~~25~~ day of June, 2001, at an *ex parte* hearing on Defendant's Motion for Expert Services, on the Memorandum of Law previously filed in this matter, on the Affidavit of counsel attached thereto, with attachments, and on the record as a whole, from all of which the Court finds that the Defendant has demonstrated a particularized need for the services of an experienced forensic scientist and the Defendant is entitled to the services requested pursuant to the authority set out in T.C.A. § 40-14-270(b); Tennessee Supreme Court Rule 13(5); Ake v. Oklahoma, 470 U.S. 68, 105 S.Ct. 1087, 85 L.Ed.2d 53 (1985); the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 8, 9, and 16 of the Tennessee Constitution.

The Court further finds the Defendant is charged with First Degree Murder and may face a sentence of death if convicted and the Defendant is indigent and cannot afford the services requested.

The Court further finds the Defendant has complied with the requirements of Rule 13, Sec. 5 of the Rules of the Tennessee Supreme Court by setting forth the name and the location of the forensic scientist and the means and date, time and location at which the services are to be provided; a statement of the itemized costs of the services and the amount of any expected additional or incidental costs.

FILED IN OFFICE

BY: TIDWELL, CLE

DATE: _____ D.C.

OFFICE: _____

OFFICE OF DISTRICT PUBLIC DEFENDER
ARDENA J. GARTH
701 Cherry Street, Suite 300
Chattanooga, Tennessee 37402
(423) 634-6374

The Court further finds the costs specified by [REDACTED], Ph.D professor of Criminalistics, Department of Sciences, John Jay College of Crimin Justice, City University of New York, N.Y., for the specific services to be provided at reasonable for the type of services to be performed under the circumstances of the case.

The Court further finds out-of-state services are necessary in this case because comparable services by a person of Dr. [REDACTED] expertise are not available to the defense in Tennessee and the rate of \$250 per hour for said services is a good and reasonable rate for the services of a qualified expert in this field.

The Court further finds these services are necessary to assure the Defendant a full and fair trial of his case and to protect the State and Federal constitutional rights of the Defendant. Therefore, It is hereby

ORDERED that [REDACTED] Ph.D., Professor of Criminalistic Department of Sciences, John Jay College of Criminal Justice, City University of New York, N.Y., be and hereby is appointed to assist the defense in this case as a forensic scientist and to provide services as set out in the attorney's affidavit which is attached hereto at a cost not to exceed \$6,000, plus reasonable and necessary expenses including travel expenses. It is further

ORDERED that Defendant will seek any necessary prior approval from

THE FOREGOING INSTRUMENT is a true and correct copy of the ORIGINAL NOW ON FILE IN MY OFFICE.

Date _____ ENTER this 5th day of June, 2001.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 5th day of June, 2001.

GWEN TIDWELL, Criminal Court Clerk
JUN 5 10 09 AM '01
GWEN TIDWELL, CLERK
BY _____ S.D.C.
F.L.M. REF: _____

APPROVED

CHIEF JUSTICE

[REDACTED]

JUDGE