IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
DIVISION II

STATE OF TENNESSEE

VS

JAMES EARL RAY

NO. 16645

Filed 5-21-69 R. Nelson D.C.

MEMORANDUM OF AUTHORITIES RELIED ON IN MOTION FOR A NEW TRIAL

On March 10, 1969, in Division III of the Criminal Court of Shelby County, Tennessee, before the Honorable Judge Preston Battle the defendant, JAMES EARL RAY, entered a Plea of Guilty to the charge of Murder in the First Degree of one Dr. Martin Luther King and was sentenced to the term of ninety-nine (99) years to be served in the State Penitentiary in Nashville, Tennessee. Three (3) days later on March 13,1969, the defendant wrote to Judge Preston Battle of his intention to file in the near future a post-conviction hearing. See Exhibit marked No. 1 attached hereto.

On March 26, 1969, James Earl Ray wrote another letter to Judge Battle, and this time stated that he wanted to go the thirty day appeal route. See Exhibit marked No. 2 attached.

On March 31, 1969, Judge Battle returned to Memphis from a short vacation period and was met at 9 A.M. of that day by one of the attorneys for James Earl Ray, the defendant herein. On that day Judge Battle exhibited the two letters he had received from James Earl Ray. Shortly thereafter in mid-afternoon of March 31, 1969, Judge Battle died of a heart attack. Shortly thereafter an Amended and Supplemental Motion was filed on behalf of James Earl Ray setting out the death of Judge Battle, and among other things, that the Plea of Guilty extended to Judge Battle was not one of a voluntary nature.

Defendant would allege that at the time the letters of record were written (and heretofore exhibited) there was in effect in the State of Tennessee a statute, namely:

> TENNESSEE CODE ANNOTATED
> Sec. 27-201. Motion for Rehearing or New Trial. - A rehearing or motion for new trial can only be applied for within thirty (30) days from the decree, verdict or judgment sought to be affected, subject, however, to the rules of court prescribing the length of time in which the application is to be made, but such rules in no case shall allow less than ten (10) days for such application. The expiration of a term of court during said period shall not shorten the time allowed.

Defendant would further state that the letters mailed to Judge Battle were effective as a Motion for a New Trial in that they conveyed a certainty of reasonable meaning. In this regard in 46 C.J. 286 it is stated, "Any motion to set aside a verdict based upon matters not appearing on the face of the record, is in legal effect a motion for a new trial; and the same is true of a motion to reinstate a cause after dismissal". This is cited in Life & Casualty Ins. Co. vs Bradley 178 Tenn. Page 530. Also, "Any motion to set aside a verdict is in legal effect a motion for a new trial". Life & Casualty Ins. Co. vs Bradley 178 Tenn. Page 531.

Defendant would further allege that at the time of Judge Battle's demise there was a certain Statute in effect in the state of Tennessee, namely:

> TENNESSEE CODE ANNOTATED
> Sec. 17-117. New Trial after Death or Insanity. - Whenever a vacancy in the office of trial judge shall exist by reason of the death of the incumbent thereof, or permanent insanity, evidenced by adjudication, after verdict but prior to the hearing of the motion for new trial, a new trial shall be granted the losing party if motion therefor shall have been filed within the time provided by rule of the court and be undisposed of at the time of such death or adjudication.

Defendant would allege that the demise of the Trial Judge was within the contemplation of the above statute, and therefore, he should be granted a new trial having filed his timely motion, and cites further, "Decisions long acquiesced in upon which important rights are based, should not be disturbed, in the absences of cogent reasons to the contrary, as it is of the utmost importance that our organic and statute law be of certain meaning and fixed interpretation", Jackson vs Handel 327 SW2d 55, citing Pitts vs Nashville Baseball Club 127 Tenn. 292 and Monday vs Millsaps 197 Tenn. 295, and 46 C.J. 286 cited in Life & Casualty Ins Co. vs Bradley 178 Tenn. Page 530.

Defendant further cites under said statute, "Only authority who may approve verdict and overrule motion for new trial by signing the minutes is the judge who heard the evidence and actually tried the case. State vs McClain,210 S.W.2d 680, 186 Tenn. 401.

Also cites, "Motion for new trial must be acted on by the trial court, before the appellate court will consider it, because such action is indispensable for the purpose of enabling the appellate court to say whether the trial court acted correctly, under this statute, in granting a new trial", Louisville & N.R. Co. v. Ray, 124 Tenn. 16, 134 S.W. 858, Ann Cas. 1912 D, 910.

Also cites, "The only authority to approve the verdict and overrule the first motion for a new trial by signing the minutes, was the Judge who heard the evidence and actually tried the case", Dennis v. State, 137 Tenn. 543 and O'Quinn v Baptist Memorial Hospital, 183 Tenn. 558.

Also cites, "This situation has given the Court grave concern; and has led us to an assiduous re-examination of what we believe to be all of the case and statutory authority in Tennessee bearing upon the question of whether the above-mentioned minutes of the Court's actions are valid and efficacious - without authentication by the signature of the Trial Judge. If not, it seems to inescapably follow that (1) there is no valid and effective judgment on the verdict of the jury; and (2) there is no valid and efficacious ruling of the Court on defendant's motion for new trial", Howard v. State, 899 S.W.2d, 739.

Defendant would allege that springing from the Motion for a New Trial, if it were denied in the ordinary course, is the Bill of Exceptions, and defendant cites, "In the absence of a properly authenticated bill of exceptions the admission of evidence cannot be reviewed by the Supreme Court", Walker v. Graham , 18 Tenn. 231, cited in Dennis v State, 137 Tenn. 543.

Also cites, "The right to a bill of exceptions is made dependent upon motion for a new trial in Circuit and Criminal Courts", Carpenter v. Wright, 158 Tenn. 289.

Defendant also cites, "It seems to be well established as a general rule that, where a party has lost the benefit of his exceptions from causes beyond his control, a new trial is properly awarded. That rule has been recognized and applied more frequently perhaps in cases where the loss of the exceptions has occurred through death or illness of the judge, whereby the perfection of a bill of exceptions has been prevented", 137 Tenn. 554.

Defendant would allege that the Plea of Guilty of itself does not forfeit the Motion for a New Trial, and he cites, "By the Constitution of the State (Article I, Sec. 9), the accused, in all cases, has a right to a "speedy public trial

by an impartial jury of the county or district in which the crime shall have been committed', and this right cannot be defeated by any deceit or device whatever. The courts would be slow to disregard the solemn admissions of guilt of the accused made in open court, by plea, or otherwise; but when it appears they were made under a total misapprehension of the prisoner's rights, through official misrepresentation, fear or fraud, it is the duty of the Court to allow the plea of guilty, and the submission, to be withdrawn, and to grant to the prisoner a fair trial, by an impartial jury", Swang v. State, 42 Tenn. 212.

Defendant would futher cite Jake Knowles v. The State, 155 Tenn. Page 181.

Defendant would allege that a waiver was executed by him at the instigation of his attorney of record at the time of his plea; however, he respectfully states that this waiver was repudiated by him almost immediately after the trial as soon as he could possible do so; he respectfully brings attention to the letter Exhibit No. 1 attached as to the promptness of his repudiation; he would respectfully show that to xxxx constitute a waiver it must be in existance at the time of that waiver. YOur defendant respectfully states that at the time of his waiver he had no right of appeal, it having not yet come into existance; that it only came into existance after the verdict of the jury and never at any time since that verdict has he waived that right to a Motion for a New Trial. "Waiver - Existence of Right - To constitute a waiver, the right or privilege alleged to have been waived must have been in existence at the time of the alleged waiver", 56 Am.Jur.13, Page 113. "Thus, one accepting dividends declared by a receiver in bankruptcy without demanding interest on the amount due does not waive his right to interest, where no right to demand interest at the time of dividend payment existed", 56 Am.Jur.13, Page 114,citing State ex rel.McConnell v.Park Bank & T.Co. 151 Tenn. 195.

In an unreported opinion the Court of Criminal Appeals of Tennessee in the cause of State of Tennessee, ex rel. Hermon R. Owens vs. Lake F. Russell, No. 49 Hamilton County, Honorable Campbell Carden, Judge, IT WAS STATED:

"Without in any way criticizing the content and use of these forms for preserving a formal record of guilty pleas of defendants, we hold that execution of these forms by the petitioner and his attorneys, and the trial court's acceptance of the petitioner's plea of guilty upon that basis, does not and cannot forever preclude the petitioner from raising any question about the voluntariness of his guilty plea. Surely it cannot be said that such a procedure permanently forecloses the issue of voluntariness and prevents the accused from ever asserting that his guilty plea was induced by promises of lenient treatment or threats or misrepresentation or fraud, if such was the fact.

"This is true for the plain and simple reason that a conviction based upon an involuntary plea of guilty is void, and, therefore, the question of the voluntariness of a plea of guilty is never foreclosed while any part of the resulting sentence remains unexecuted. The law is no longer open to debate or question that a guilty plea is involuntary and void if induced by promises of preferential treatment or threats or intimidation or total misapprehension of his rights, through official misrepresentation, fear or fraud. Henderson v.State ex rel. Lance, 419 S.W.2d 176; Machibroda v. United States, 368 U.S. 487, 82 S.Ct.510, 7 L.Ed2d 473; Olive v. United States, 327 ### F.2d 646 (6th Cir., 1964),cert den., 377 U.S. 971, 84 S.Ct. 1653, 12 LEd2d 740; Scott v. United States, 349 ### F.2d 641 (6th Cir. 1965)." Said opinion was concurred in by the Honorable Mark A. Walker and was written by W. Wayne Oliver, Judge of the Criminal Court of Appeals. Honorable Judge Galbreath did not participate in this cause.

"The voluntary or involuntary character of the confession is a question of law to be determined by the trial judge from the adduced facts", WHARTON ON CRIMINAL EVIDENCE VOL. 2,Page 38, citing Boyd v. State, 21 Tenn. 39.

Requiring a waiver of right to appeal was held improper in People v. Ramos, 292 N.Y.State 2d 938 (2nd Dept.1968).

Defendant would allege that through the unfortunate demise of the trial judge his right of dependency upon the trial judge as the thirteenth juror has effectively been cut off. In this regard, your defendant respecfully states that the right of this present Court to rely on the trial judge as the thirteenth juror, or Appellate Court, has also been effectively silenced. "Trial judge is charged by law to act as the thirteenth juror, and if he is dissatisfied with verdict of jury, it is his duty to grant a new trial", London v. Step, 405 SW2d 598, 34 Tenn. L.R.713. "Federal district court does not sit as thirteenth juror as do Tennessee state trial judges", Sifton v. Clements, 257 F.Supp.63.

Defendant would allege that he was denied effective counsel. Defendant relies upon the Fourteenth and Sixth Amendments to the United States Constitution and Article I, Section 9 of the State of Tennessee Constitution that he was denied legal counsel, and he cites as evidence and brings to the attention of the Court Exhibits Nos. 1 through 7 attached to his Amended and Supplemental Motion for a New Trial.

Respectfully submitted,

ATTORNEYS FOR THE DEFENDANT:

Richard J. Ryan
RICHARD J. RYAN

J. B. Stoner by RJR
J. B. STONER

Robert W. Hill Jr. by RJR
ROBERT W. HILL,JR.

NOTICE OF SERVICE

Copies of Memorandum of Authorities Relied on in Motion for a New Trial delivered personally to District Attorney General Phil M. Canale, Jr. on May 21, 1969, at 10:25 m. RJR

3-13-69

Dear Sir,

I wish to inform the honorable court that Mr. Lawrence Hawkins Att. for my Daughter is not longer representing me in any capacity. My reason for writing this letter is that I intend to file for a post conviction hearing in the very near future and don't want him acting any legal means unless I am in his favor to do so.

Sincerly
James Earl Ray

FILED 4-1-69 2:55 P.M.
J. A. BLACKWELL, CLERK
BY [illegible] D. C.

Exhibit #1

STATE OF TENNESSEE
Shelby County

I, J. A. BLACKWELL, Clerk of the Criminal Courts of Shelby County, Tennessee,

do hereby certify that the foregoing ONE (1) pages of writing contain a full,

complete, true and perfect copy of ~~all the proceedings had~~ letter from defendant, dated March 13, 1969 in the case of the State of

Tennessee, vs. Docket No. 16645

JAMES EARL RAY

Indictment for MURDER FIRST DEGREE

as the same now appears on file, and of record in my office.

WITNESS my hand and the seal of said Court, at office in Memphis,

this, the 16th day of MAY 19 68.

J. A. BLACKWELL, Clerk

SEAL By: E. Lobb, Jr. D. C.

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3-16-69

Hon. Judge W. Preston Battle
Judge of the Criminal Court
Memphis Tennessee.

I would respectfully request this court to treat this letter as a legal notice, of an intent to ask for a reversal of the 99 year action petitions received in aforementioned court. I understand on one avenue of appeal, I have only 30 days in which to file a timely notice to have previous action set aside. That is the appeal route to which I address the court.

I also would like to bring to the attention of the Honorable Court, That Mr. Perry Farrow, The Attorney who was suppose to be representing me on this charge, acted in open court.

One, That since he "Mr. Farrow" was receiving no funds to help prepare case for trial and he did not think he would be required to use his own funds, he requested court to appoint counsel to help defend case. The court appointed public defender to cooperate and assist Mr. Farrow.

Two, Mr. Farrow said in open court he did not want or expect to receive a cent for his efforts.

I think from Mr. Perry Farrow statement to the press that he had a contract from me and Mr. William R. Hall, "agreeing" to one fee for Hard days of that he would receive $150.00 would be due to not file a due Two-Oaks Mr. Farrow told the court.

Exhibit #2

There is Dr. James E. Ray in this Court pursuant to a writ from Mr. William B. Hill.

The only reason for bringing the Petitioner to the attention of the Court is that I would respectfully move that the Court appoint an Attorney, or the Public Defender to assist me in the proceedings, I have no training nor have I received any further formal education, since I am not Counsel.

Petitioner uses the word 'assist', as I kindly request the Court, that I be personally present at the hearing, and the assistant Court appointed counsel, so that their be no repetition of Mr. Jerry Thomas actions.

Respectfully,

James Earl Ray
Station B-West
777 S B Hwy 3
Nashville, Tenn. 37203.

FILED 4-1-69 2 P.M.
J. A. BLACKWELL, CLERK
BY [signature] D. C.

I, JAMES A. BLACKWELL, HEREBY CERTIFY THAT THE DATE WHICH APPEARS AT THE TOP OF THIS LETTER, ON THE FIRST PAGE, WHICH HAS BEEN OBLITERATED BY PUNCHING THE HOLE FOR INSERTION OF THIS LETTER IN THE JACKET, IS 3-26-69.

J. A. BLACKWELL, CRIMINAL COURT CLERK

[signature]

WITNESS

[signature]

WITNESS

DATED

STATE OF TENNESSEE
Shelby County

I, J. A. BLACKWELL, Clerk of the Criminal Courts of Shelby County, Tennessee,

do hereby certify that the foregoing TWO (2) pages of writing contain a full,

complete, true and perfect copy of ~~all the proceedings had~~ letter from defendant, dated March 26, 1969 in the case of the State of

Tennessee, vs. Docket No. 16645

JAMES EARL RAY

Indictment for MURDER FIRST DEGREE

as the same now appears on file, and of record in my office.

WITNESS my hand and the seal of said Court, at office in Memphis,

this, the 16th day of MAY 1969

J. A. BLACKWELL, Clerk

SEAL By: _____ D. C.

HOLIDAY PRESS — MEMPHIS

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ATTORNEYS FOR DEFENDANT:

RICHARD J. RYAN,
J. B. STONER
ROBERT W. HILL, JR.

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