IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

DIVISION III

STATE OF TENNESSEE,

Complainant,

versus) NO. 16645

JAMES EARL RAY, Alias,

Defendant.

TRANSCRIPT OF EXCERPT FROM MOTION HELD ON

SEPTEMBER 6, 1968

FILED Oct 21 1968

J. A. BLACKWELL, CLERK

BY [signature] D. C.

* * *

MR. HANES, SR.: All right, sir. Your Honor, may I at this time raise a couple of points in connection with this case and ask for a ruling from Your Honor on some clarification on it?

Now, Your Honor, in my going around and attempting to interview witnesses in this case I find that somehow the citizenry of this area have been intimidated and someone brought about a great conspiracy of silence, and I am willing to make a showing of this, Your Honor.

There have been some misrepresentations from witnesses as to Your Honor's order, original order, and I am referring specifically to the last paragraph thereof, which states, "That nothing herein shall be construed to preclude or prevent a witness from talking to the Attorney General or his representative or to the Attorneys of the Defendant in this case."

I think that is essentially what it says, Your Honor.

I have run into this question on the part of certain employees of the City of Memphis who have been told, that have been ordered to keep their mouths shut. I have run into this in other areas personally where I have been told that, "If we talk to you we will be held in contempt," Your Honor.

And I would, perhaps, to state this for the record, that this has happened and it has happened to a representative; it has happened to me personally, Your Honor. And I would like to get that in the record, Your Honor. And if Your Honor could somehow make a statement to the effect, reiterate the last paragraph of your original order, that it does not mean that witnesses are not to talk unless they choose to do so voluntarily, but they will not be held in contempt of Court if they do talk to the Attorneys for the defense, Your Honor.

THE COURT: Yes, sir, the order speaks for itself. I mean this order that was dated July 18, 1968, Roman Numeral Ten, provides:

> "Nothing in this Order shall prohibit any witness from discussing any matter in connection with the case with any of the Attorneys representing the defendant or the state or any representative of such attorneys."

And I see certain members of the news media back there. I wish this would be given the widest possible coverage, because if anyone, if any witness thinks at all that he has been precluded by this order from talking to attorneys for the defense or State, is wrong. It is up to the witness himself who he talks to.

There is only one time the witness has to talk and that is when he is brought into Court and placed on the witness stand and the Judge tells him to answer a question. You can't even do that in a Grand Jury if you bring him into the Grand Jury. If he is brought into Court and placed on that stand, the Judge can order him to answer a question.

All I can say, he has absolute freedom to discuss anything with you, and if he cares to he certainly will not be put under -- he will not violate any order by this Court or be in any danger of any contempt action whatever.

MR. HANES, SR.: Your Honor, in reference to Roman Numeral Paragraph Ten in Your order, the language therein is very clear. It is unambiguous. As Your Honor said, it speaks for itself, but I mean this was delivered and served on certain State's witnesses that were told at that time, "You don't talk to anybody, defendant's attorneys. If you do you will be held in contempt of Court." They say, "We want to talk to you."

THE COURT: Do you have any specific instance?

MR. HANES, SR.: Yes, sir.

THE COURT: Who is he?

MR. HANES, SR.: Mr. Victor DuPratt, owner of the Rebel Motel.

THE COURT: Was told by whom?

MR. HANES, SR.: Told by a representative of the Attorney General's office.

MR. DWYER: We emphatically deny any instructions issued from our office, Your Honor please, to any witness in this case at any time, and specifically this one, that we have instructed anybody in our office to tell any witness that they have to or do not have to talk to anybody in this matter.

As far as I know, if the Court pleases, and while we are speaking about the record, the record probably should reflect that a witness is not compelled or commanded to speak or answer any questions at any time, at any place, unless it is in the proper judicial tribunal under our law.

THE COURT: That is what I have said.

MR. HANES, SR.: Your Honor, we understand that. The Attorney General is getting a little excited. All I said was the man said he wanted to talk to me and would talk to me and tell what he told the investigators for the City and County, but he was told that if he did he would be held in contempt of Court, and I think this will clarify this matter in the minds of the public.

Now, I had, Your Honor, a personal experience in attempting to talk to employees of the City of Memphis. They were afraid to talk. They said, "We have been ordered by the Commission not to say a word or talk to you."

Now, this was said to me by the Captain of the Fire Department of the City of Memphis at Station No. 2 located and situated near the Lorraine Motel and the rooming house in question in this case.

THE COURT: Mr. Hanes, all I can say is that any witness, and I don't know how to make it any plainer, any witness that you approach is not under any orders of this Court not to talk. It is entirely a matter of his own volition about this matter.

In other words, if he wants to talk to you he will not be in any jeopardy from this Court.

MR. HANES, SR.: All right, sir.

Now, Your Honor, if I might, one or two other points.

MR. DWYER: If we are going to argue motions I think we should be in compliance with the rules of the Court.

MR. HANES, SR.: We are not arguing motions.

Your Honor has me under orders and under rules of the Press here, and I don't know how else to do it to see that these rules are observed. I do not intend to make these in the form of a motion, but I want to call to Your Honor's attention, and for the record, Your Honor, the defendant in this case, I think and reiterate, is being treated not as a usual resident of this jail here but as an unusual one, Your Honor, and I don't think it is right and it is having its effect on this

man, and I am interested in the truth of this matter and want to see this man brought to trial.

This man has two guards in there to sit with him 24 hours a day, Your Honor. He has television sets on him 24 hours a day. He has bright lights, brighter than these, burning in his eyes 24 hours a day. This man cannot rest. Why he hides under a pillow or cover to sleep, Your Honor, and I think this is cruel and inhuman, and Your Honor, ---

THE COURT: All right. All right, Mr. Hanes, you are getting into matters of treatment of the defendant and I think you should do this in writing. I think this is serious enough that whatever testimony we have be under oath and you ask for whatever relief you want, and this can be a regular motion brought up before the Court.

MR. HANES, SR.: All right, sir.

THE COURT: In other words, I think it is too serious for you just to make this in the form of an oral motion. I think we better do it by the book and all the formalities.

MR. HANES, SR.: All right, sir. All right, sir. All right, sir, Your Honor.

THE COURT: All right, anything else you want to bring to the Court's attention orally at this time?

All right, gentlemen, is there nothing?

MR. HANES, SR.: Your Honor, I have other things but

they will be reduced to writing in accordance with your suggestion.

THE COURT: All right. If they are serious things -- I have invited anyone who has anything to bring up about this case to do it in Court.

MR. HANES, SR.: Your Honor, one thing, please, sir. I would like to inspect the rooming house over here on South Main Street, and now the rooms and premises are locked, and I need to find out who has them locked. I need to inspect them and take a look at those, and I would like to do that this afternoon if I could.

THE COURT: Can that be arranged?

MR. DWYER: They are not under any instructions to us to have that place locked by us down there. I imagine she is still in the roominghouse business. She is not under any instructions from us.

MR. HANES, SR.: I am not saying they are under any instructions. I am saying it is locked. I am saying if the Attorney General's Office or City Police have them locked up, we would like to inspect those rooms.

THE COURT: I think that would have probably been a good thing in this motion for discovery.

MR. HANES, SR.: All right, Your Honor. Thank you.

THE COURT: I think we will do it this way: Suppose

you go down there and see if they will let you see the rooms. If you are not able to see the rooms, see me on the 18th.

I think you have a right to go in there and examine them. If you can't between now and then we will see that you do.

Is that fair enough?

MR. HANES, SR.: Fair enough.

THE COURT: Anything further?

MR. DWYER: Nothing from us.

THE COURT: If not, we will adjourn Court.

(ADJOURNMENT)