FD - 245 (REV. 4-13-60)

U. S. Department of Justice

(MATERIAL MUST NOT BE REMOVED FROM OR ADDED TO THIS FILE)

DO NOT DESTROY
PENDING LITIGATION

FIELD OFFICE FILE
FOIPA PROCESSED

FEDERAL BUREAU

ENTIRE FILE REVIEWED
FOR HISTORICAL
DECLASSIFICATION

of

NSA EXEMPTION 3 APPLIED
WHERE IT IS CHECKED
DATE 10-31-01 BY SP1 CLK/00

INVESTIGATION

DO NOT DESTROY
HISTORICAL VALUE
NATIONAL ARCHIVES

Bureau File Number 44-38861

"DO NOT DESTROY:
HISTORICAL VALUE,
NATIONAL ARCHIVES"

See also Nos.

SEE VOL 1
FOR LITIGATION

Legal Attache (Rome)

Classification No. 44-1917-Sub-C

Volume Number 2

Serials 94 — 150

See Next Section

SHAW-WALKER 18-31713

Le Next Section

44-1987-Sub C-94

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(3) In addition, although Counsel for this Defendant has assidiously pursued an effort to obtain depositions, affidavits, exhibits, and statements, made the basis for the extradition of Defendant, from London, England, to Memphis, Tennessee, he has not been successful.

On November 12, 1968, this Honorable Court directed Arthur J. Hanes, Esquire, former attorney for the defendant, to deliver his files and investigative reports to Percy FForeman, his successor as defense counsel, and, although said Percy FForeman called on the said Arthur Hanes at his office in Birmingham, Alabama, the following Monday to receive such files, the same were not forthcoming. The said Percy Foreman requested said files and investigative reports of the said Arthur J. Hanes, Sr., in the Courtroom on November 12, 1968, immediately upon the Court stating from the Bench his mandate that such files and reports be surrendered to the successor attorney. The said Arthur J. Hanes, Sr., had therefore been paid $30,000 by and at the request of the Defendant, and said files and investigative reports had been accumulated through the expenditure of this money derived from this Defendant.

The only writing, report or exhibit of any kind obtained by Percy Foreman from Arthur J. Hanes on his visit to Mr. Hanes' office in Birmingham about the 18th of November, 1968, were pencilled notes reproduced by photocopy of an alleged recording of a police broadcast made in Memphis about 6:00 p.m. on April 4, 1968.

Upon reporting this fact to this Honorable Court, a written order was entered by the Court and served on Arthur J. Hanes, Sr., whereupon, the said Percy Foreman received photocopy of approximately 19 pages, more or less, of interviews with witnesses, most of which interviews consisted solely of impeaching testimony.

Approximately seven to ten days ago, through the intervention and offices of William Bradford Huie, a writer, and friend of Arthfur J. Hanes, Sr., the said Percy Foreman was able to obtain an additional 150 pages, more or less of investigatory effort, which, for the first time, was furnished information upon which to base an investigation.

(4) However, no part of the material mentioned in the first paragraph (3) hereinabove were included in any portions of the files turned over to said Percy Foreman, either directly or through William Bradford Huie.

There is attached hereto a photocopy of a letter dated February 10, 1969, from Michael D. Eugene, 25 Rowsley Avenue, Hendon, N.W. 4, London, England, the attorney who represented James Earl Ray at his extradition hearing in July of 1968, which states categorically that on November 1, 1968, all of this material matter was sent Mr. Hanes from London, England, to Birmingham, Alabama, to-with

> "It is obvious from your letter that your main concern relates to the first bundle of documents, referred to above, and also the greater part of the depositions. Copies of these documents were forwarded by me to Mr. Hanes on or about the 1st November last. I did not send a covering letter as it was quite apparent from Mr. Hanes urgent request, that he required these documents with the utmost expedition and I merely sent him a complimentary slip. I therefore regret that I cannot be more specific as far as the date is concerned but I am satisfied that it was around the aforesaid period. This is an extremely bulky collection of documents and in all, they number over two hundred pages."

There is also attached hereto a photocopy the first page of a letter written by present counsel for Defendant to Michael D. Eugene.

A proper preparation of this case, requires that the London depositions, affidavits, exhibits, and testimony be available tof Counsel for Defendant in order that he may brief the law of extradition and the Treaties

between the United States and Great Britain, so as to file any preliminary motions revealed as necessary by such testimony from depositions and affidavits as may be included in the 200 pages referred to in Michael D. Eugene's letter of February 10, 1969.

Forreach and all of the foregoing reasons and because investigators of the Public Defender's Office, Shelby County, have not completed and will not be able to complete an adequate investigation and interview of witnesses, so as to be prepared for trial on March 3rd, this Defendant respectfully prays the Court to grant an additional continuance for such length of time as the Court may deem proper,

JAMES EARL RAY

AFFIDAVIT

STATE OF TENNESSEE

COUNTY OF SHELBY

Before me, the undersigned Notary Public, in and for Shelby County, Tennessee, on this day personally appeared James Early Ray, through, being by me first duly sworn, on oath, says:

The foregoing allegations in the aforesaid motion for a continuance are true.

JAMES EARL RAY

Subscribed and sworn to at Memphis, Tennessee, this 14th day of February, 1969.

Notary Public

My Commission Expires:

01-203 0787

25, ROWSLEY AVENUE,
HENDON, N.W.4

10th February, 1969

Dear Mr. Foreman,

The reason for my not having replied to your letter of the 31st January is due to my having been away from the office for the past few days and having just returned.

I am therefore replying to you immediately as, obviously, there is some urgency in your request.

The times of your telephone calls to my office and the substance of the conversations between us are confirmed by me.

In order to clarify any confusion that may have arisen with regard to the character of the documents relating to the trial proceedings in London, I would inform you of the following.

These documents may, for the sake of convenience, be divided into three parts.

Firstly, there is the bundle of documents which comprises the Affidavits of approximately twenty Prosecution witnesses (including Bonebrake's), various exhibits attached thereto and also other documents such as the requisition from the United States Ambassador to London, the Certificate of Detention, the autopsy report on Martin Luther King and his death certificate, and also other documents too numerous to detail. These documents formed the basis of the Prosecution case in the London Extradition Proceedings and were served on my firm prior to the Hearing.

The second category of documents are those which comprise the oral evidence taken at the aforesaid hearings and which we term "depositions". Included in these would be the oral statements of Ray, to which you refer in your letter. In English proceedings, only the answers of the witness or defendant are noted in the depositions and no note is ever taken of the questions asked.

/continued .....

01-203 0787

25, ROWSLEY AVENUE,
HENDON, N.W.4

The third category of documents is simply the transcription of the London hearing which I obtained from the Press Associations Special Service and to which, again, you refer in your letter as being in your possession.

It is obvious from your letter that your main concern relates to the first bundle of documents, referred to above, and also the greater part of the depositions. Copies of these documents were forwarded by me to Mr. Hanes on or about the 1st November last. I did not send a covering letter as it was quite apparent from Mr. Hanes urgent request, that he required these documents with the utmost expedition and I merely sent him a complimentary slip. I therefore regret that I cannot be more specific as far as the date is concerned but I am satisfied that it was around the aforesaid period. This is an extremely bulky collection of documents and in all, they number over two hundred pages.

I acknowledge receipt of your cheque in the sum of £14.5s. but unfortunately there appears to have been some sort of clerical error. The equivalent English remuneration for 285 dollars is £118.15s. The balance that I would therefore be obliged to receive is £104.10s. Upon receipt of this sum I shall despatch the required documents by Express Airmail.

I would additionally inform you that there are several letters in my possession relating to this case, the contents of which you may find interesting. Unfortunately, as these were addressed to my firm, I cannot relinquish them but I confirm that I shall bring them with me to show you.

Yours sincerely,

Michael D. Eugene.

Percy Foreman Esquire,
C/O Room 1125,
Sheraton Peabody Hotel,
Memphis, Tennessee,
U.S.A.

LAW OFFICES OF
PERCY FOREMAN
804 SOUTH COAST BUILDING
HOUSTON, TEXAS 77002

MAIN AT RUSK

CA 4-9321

Sheraton - P eabody
Memphis, Tennessee
Room 1L25
February 14, 1969

Michael D. Eugene, Esq.,
Attorney, Counselor and
Barrister,
25 Rowsley, A venue.

Dear Mr. Eugene:

Your letter of the 10th reached me this (Friday) morning.

The mistake in the amount of remittance was that of the banker at the Union Planters National Bank. I have this day written him an additional check $250.00 (the first one was $34.05). A cashier's check for L104.1os is enclosed herewith. I am s ure the documents, testimony and deposi - tions will come forward without delay.

You are correct in that we need:

(1) The aff idavits of the 20 prosecuting witnesses furnished you in advance of the hearing. These include that of Mr. Bonebrake. Also, 19 others. Also exhibits attached thereto, requisition from the United States Ambassador to London, the Certificate of detention, autoposy of Martin Luther King, his death certificate and others too numerous to mention.

(2) A transcription of the oral evidence taken at the extradition hearing in London, when James Earl Ray was ordered into the custody of the United States authorities.

All the above you state you sent Mr. Arthur J. Hanes Sr., on November 1st, without a covering letter. Mr. Hanes has never furnished us a single sheet of any of the above. Nor did he give us the Press Association Special Service account of the hearing. But we did receive a copy of this latter from a writer, William Bradford Huie, about 10 days ago. He stated that he obtained it from Arthur J. Hanes Sr., the preceding Saturday afternoon, upon agreeing to pay him an additional $5,000.00.

IN THE CRIMINAL COURT OF SHELBY COUNTY , TENNESSEE

DIVISION III

STATE OF TENNESSEE	)	
Vs.	)	Nos. 16,645 and 16,819
JAMES EARL RAY	)	

MOTION TO REQUIRE DISTRICT ATTORNEY GENERAL TO PREPARE AND PRESENT TO THE COURT PROPOSED STIPULATIONS AS TO THE UNDISPUTED TESTIMONY OF WITNESSES

TO SAID HONORABLE COURT:

COMES now, J ames Earl Ray, Defendant, acting herein by and through his attorneys of record, and files this his motion to require the prosecuting attorneys in this case to prepare and present to the Court and to said attorneys for the defense a proposed stipulation of the testimony of all witnesses residing outside Shelby County, Tenn essee, whose names have been furnished said attorneys for the defense as possible witnesses for the prosecution, in support of which motion said Defendant would respectfully show the Court:

I.

The office of the District Attorney General has heretofore, pursuant to and order of the Court so to do, furnished defense counsel with the names of some 360 or more witnesses as possible witnesses to be called and offered as witnesses for the prosecution at the trial of the above case or cases.

A very large number of these witnesses reside abroad or in other States than Tennessee. The expense of bringing said witnesses and their maintenance during this trial could conceivably cost the taxpayers of Shelby County and the State of Tennessee as much as a half million ($500,000.00) dollars, that could be better spent for other needful purposes.

Because, Defendant says, from magazine and newspaper articles available to him and his attorneys, purporting to reflect his travels, contacts and activities in distant states and foreign countries, most, if not all such reports will not be de-

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nied and this Defendant and his attorneys are willing to stipulate either to the fact or the testimony of such absent witnesses, so as to save the expense of their transportation and maintenance as witnesses throughout the trial of this case. Defendant says that if the prosecution insists on the bringing of said witnesses in person, that his attorneys can not, in good conscience, agree to their release and return to their distant homes until the conclu - sion of the trial, and therefore their maintenance may cover a period of three to six months, more or less. Intimidate

II.

Defendant further says the presentation of said witnesses in person, rather than by stipulation ad prayed for herein, will unduly delay, impede and waste the time of this Honorable Court, needlessly and wastefully. That there is not physical possibility of this case terminating in less than four months, if the prosecution persists in the personal presentation of said witnesses. Furthermore, such an extended trial is calculated to so confuse a lay jury as to prevent the proper consideration by the jury of the pertinent and essential facts and testimony to the issues raised by the pleadings. Confuse

III.

Defendant says that it is not meet nor proper that the time of jurors who might be selected in this case be consumed for weeks on end by undisputed and immaterial testimony that can be made available and received into evidence by stipulation. Nor is it fair to the treasury of Shelby County that the processes of justice be strained and penalized, when such can be avoided by stipulation. Equate expenses with justice

IV.

Defendant says that such witnesses whose testimony can be stipulated come from: England, Canada, Portugal, California Alabama, Washington, Georgia and elsewhere and the law requires the advance to them of ten cents ($.10¢) per mile each way plus living expenses while in attendance on the Court.

V.

Defendant says that this motion is filed herein approximately one month before any of said witnesses will have left their homes and thereby obligated Shelby County, Tennessee, for the payment of their travel and living expenses, and in ample time for the preparation, presentation and consideration of the proposal to stipulate and for the entering into said stipulation.

Furthermore, that the prosecution has in its possession a detailed report of the interviews of such witnesses by the agents of the Federal Bureau of Investigation and by its own investigators and is well aware of what their testimony will be and the preparation of such proposed stipulations will not unduly inconvenience the prosecution, and that for every penny of expense incident to the preparation of such stipulation, approximately $1,000.00 can be saved the taxpayers of Shelby County, Tennessee.

V.

This Defendant and his attorneys verily believe that every word of testimony that could be available from 99.99% of said witnesses, in person, can be stipulated and made a part of the record thereby.

WHEREFORE, premises considered, Defendant prays that an order enter directing the District Attorney General and his assistants attorney general to prepare and present to this Court within five days of the presentation of this motion a proposed stipulation as to the testimony of each and every witness it has furnished Defense Counsel, who reside beyond the limits of Shelby County, ~~Texas~~ Tennessee, to the end that such proposed stipulations or as much thereof as may be undisputed be entered into in advance by the Defendant and his attorneys, before the financial expense and drain on Shelby County's treasury shall occur, as Defendant, in duty bound, will ever pray.

James Earl Ray
JAMES EARL RAY.

Hugh Stanton
Hugh Stanton, Jr.
PUBLIC DEFENDERS.

Of counsel
Percy Foreman
Percy Foreman

Constitutional right Correction from dictaphone

O R D E R

On this the ____ day of February, A.D., 1969, the fore - going Motion to Require the District Attorney General and prosecuting attorneys to prepare and present proposed stipulations as to the testimony of witnesses residing beyond Shelby County, Tennennee, was presented to and considered by the Court, and the Court having considered the same, and believing the administration of justice would be facilitated and the trial expedited by such stipulations, as proposed by the Defendant and his counsel, it is, accordingly:

GRANTED as more particularly appears by an order to that effect this day entered herein

OVERRULED and REFUSED, to which action of the Court in overruling and refusing to grant said motion the Defendant then and there in open court excepted, and said motion, together with this order thereon and Defendants exception to the action of the Court in overruling and refusing said motion are here-now ordered filed a s a part of the record of this case.

W. PRESTON BATTLE, Judge

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

DIVISION III

STATE OF TENNESSEE	)	
Vs.	)	NOS. 16645 and 16819
JAMES EARL RAY	)	

MOTION TO DESIGNATE COURT REPORTERS AND PROVIDE FOR THEIR COMPENSATION BY THE STATE OF TENNESSEE

TO SAID HONORABLE COURT:

COMES NOW, James Earl Ray, Defendant in the above styled and numbered causes and files this Motion to Designate Court Reporters and to enter an order that will provide for the payment of their fees by the State of Tennessee; and, in support of said motion would respectfully show the Court as follows, to-wit:

I.

Said Defendant has heretofore testified in open court to the fact that he is an indigent person and has been so adjudicated by this Court; and, pursuant to said finding this Court has appointed the Public Defender of Shelby County to act as counsel for said Defendant. Co-counsel, Percy Foreman, admitted for the purpose of appearing in the above cases has received no fee and does not contemplate that he will receive any such fee.for his appearance herein. Pictures + 5000

II.

This motion is filed pursuant to the provisions of the Tennessee Code of Criminal Procedure, Articles 40-2029 through 40-2043, inclusive, the same being Chapter 221 of the Sesions Laws of the Legislature of the State of Tennessee, Acts of 1965, which give the Court the power and authority to grant all of the relief herein prayed for, and, in the opinion of the att orneys for this Defendant, make the granting of such relief mandatory.

III.

Defendant says that Shelby County, Tennessee is a principal metropolitan area of the State of Tennessee, having a population

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of approximately 1,000,000 or more inhabitants and having within its territorial area at lease several dozen eminently qualified Court Reporters, including but not limited to more than two dozen such who are available for appointment by this Court as Reporter and Auxiliary Reporter to act as such in the above styled cases and as herein prayed for.

Therefore, Shelby County, Tennessee does not come within the provisions of Article 40-2042 of the Tennessee Code of Criminal procedure which article authorizes the use of 'recording equipment' in lieu of a qualified Court Reporter in remote counties where no qualified Court Reporter is available to record the proceedings. Shelby County has an abundance of such qualified reporters, and due proc ess of law provided by the Constitutions of the State of Tennessee and of the United States of America justify and require the appointment of such qualified reporter to record the proceedings in the above styled cases against this Defendant.

IV.

However, the general practice prevailing for the recording of proceedings in the trials of felony criminal cases in Shelby County, Tennessee, and which will prevail in this case in the event of the overruling of this motion, is to have such proceedings 'recorded' on a mechanical dictating machine by a deputy clerk of the Court, which the Statutes of the State of Tennessee authorizes only in Counties in which a judge can truthfully certify 'that no qualified court reporter is available to record the proc eedings'.

Defendant says that the purported recording of the proceedings by such mechanical device is inadequate, inaccurate, haphazard, and completely unreliable. That Defendant is charged in one of the above cases with m urder with malice aforethaught for which one of the alternate punishments is Death. That he has the Constitutional right of appeal in the event of conviction, which carries with it the right to have a truly accurate record of the proceedings below for the guidance of the appellate tribunal in reviewing his trial below, and, as above pleaded, any derogation or infringement of

that right by failing to provide a qualified court reporter would be and is a deprivation of the right of the Defendant to 'effective representation of counsel' as well as of due process of law, guaranteed under the Constitutions aforesaid of the United States of America and of the State of Tennessee.

V.

Defendant says that daily copy of the proceedings will be needed for his effective representation by counsel and that such will require alternate court reporters working in relays to prepare such copy. That it is a physical impossibility for one reporter to carry the load of taking a day's testimony and then transcribing it before the succeeding day. That this Court has the authority under 40-2032, T.C.C.P to appoint such auxiliary reporters as the exigencies of the case may require and that at least one and perhaps two such auxiliary reporters should be appointed, and their compensation as well as that of the first such reporter should be provided for and should be paid by the State of Tennessee.

VI.

This Defendant is informed and believes and upon such information alleges as a fact that various news agencies, reproducing equipment companies and other commercial enterprises, either for commercial profit of for the advertising value to be derived therefrom, have contracted and agreed to furnish numerous office personnel, agents, representatives, operators and others to duplicate, disseminate, merchandise and sell the proceedings on a daily basis to news media, writers, wire services and other curious and or interested persons, firms and corporations, as such proceedings of the trial of this case may be or become available from the mechanical recording devices that would be used should this motion be denied.

Defendant says that money changers in the temple of justice are not contemplated by the spirit or letter of the law of Tennessee. That such a course of commercializing the dissemination of the proceedings of this Honorable Court would

subject this Court to the impossible task of supervision over legally unauthorized employees of the various letter services, duplicating machine people, transcribers, recorders, out of the presence of the Court and beyond the Court's control, all in violation of the spirit and the letter of the law as laid down in articles 40-2029 through 40-2043, aforesaid, and especially of article 40-2038 which provides:

> "The reporters shall be subject to the supervision of the appointing judge in the performance of their duties, INCLUDING DEALINGS WITH THE PARTIES REQUESTING TRANSCRIPTS *********" (emphasis added).

And, in this connection, Defendant is informed and believes that the expressed demand for copies of said daily transcript is so widely based that a proper control by the Court and the limitation of the right to produce and sell such daily copy to the court appointed court reporter and auxiliary reporters can make daily copy available at little or not additional expense to the State of Tennessee. At least, that such can be available as daily copy within the cost of what would be the normal cost of such daily proceedings if produced in due time and not at daily copy rates.

VII.

This Defendant says that he is without funds with which to engage, employ and compensate such duly appointed reporter and such auxiliary reporters hereinabove requested.

WHEREFORE, premises considered, Defendant prays the Court to nominate and appoint a qualified Court Reporter and such auxiliary court reporters as may to the Court seem necessary and to enter an order providing for their compensation by the State of Tennessee, as provided by law,and, also, that the Court enter an order providing that such duly appointed court reporters and auxiliary court reporters, as a unit, and they only shall have the right to sell and or offer for sale transcripts of the daily proceedings, and that no copies of such proceedings shall be duplicated and circulated by any original purchaser of such a copy of a transcript of any daily proceedings by any person, firm or corporation or agent thereof, except such appointed court

reporters, without permission to duplicate said original transcript of daily proceedings having been applied for in writing to this Court and without a hearing having been had on such application to duplicate and without an order first having been entered of record by the Court so permitting such duplication, and for such other and further orders with reference to the reporting, duplicating and dissemination of such prodeedings as the court my deem firt, suitable and proper, as said Defendant, in duty bound, will ever pray.

James Earl Ray
JAMES EARL RAY, Defendant

STATE OF TENNESSEE |
COUNTY OF SHELBY |

SUBSCRIBED AND swworn to before me the undersigned Notary Public in and for Shelby County, Tennessee, by JAMES EARL RAY, known to me, this _____ day of February, A. D., 1969.

Notary Public in and for
Shelby County, Tennessee.

SEAL

Hugh Stanton Sr
Hugh Stanton, Sr.,
Hugh Stanton Jr
Hugh Stanton, Jr.,

PUBLIC DEFENDER'S OFFICE
SHELBY CO., TENNESSEE.

Percy Foreman
Percy Foreman, Attorney at Law

Of counsel.

O R D E R

On this the _____ day of February, A.D., 1969, was duly presented the foregoing Defendant's Motion to nominate and appoint qualified reporters and auxiliary court reporters and to fix their compensation and provide their payment by the State of Tenneessee and to enter an order controlling the sale, dissemination, cirulation and reproducing of daily copy of the Court proceedings and forbidding same by any one other than the duly appointed Court Reporters and duly appointed auxiliary reporters, as a unit, and said motion was duly considered by the Court, and the Court being of the opinion that same should be granted, it is, accordingly:

GRANTED in all things as more particularly appears by an order this day entered herein.

OVERRULED and DENIED, to which action of the Court in overruling said motion the Defendant then and there in open Court excepted, and said motion, together with this ruling thereon and Defendant's exception thereto is here now ordered filed as a part of the record of this case.

W. PRESTON BATTLE, Judge

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE	)	
	)	
VS	)	
	)	No. _____
JAMES EARL RAY, ETC.,	)	
	)	
Defendant.	)	

AFFIDAVIT OF VERNON N. SHORT

STATE OF TENNESSEE)
) ss
COUNTY OF SHELBY)

Vernon N. Short, being duly sworn, deposes and says:

That he is a Notary Public at Large for the State of Tennessee and is currently practicing his skill of shorthand (court) reporting in the free-lance field in Memphis and Shelby County, Tennessee, and has been actively engaged in that locale since May 1957.

That he is a member in good standing of the national, state, and local shorthand reporting associations and is currently vice-president of the Memphis & Shelby County Shorthand Reporters Association.

That as of this date, February 5, 1969, there are a minimum of fifteen (15) shorthand reporters actively engaged in the free-lance field of court and general

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reporting in Memphis, Shelby County, Tennessee, who are available for employment in court reporting.

FURTHER AFFIANT SAITH NOT.

Vernon N. Short

VERNON N. SHORT

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

Sworn to and subscribed before me on this fifth day of February, 1969.

Bobby J. Dodson

BOBBY J. DODSON
Notary Public at Large
State of Tennessee

My commission expires February 4, 1970.

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FILED
MAY 5 1967
BESSIE BUFFALOE, Clerk

ROBERT L. KERNES)
:)
:)
: SHELBY CRIMINAL
V.)
: Hon. W. Preston Battle, Judge.
:)
:)
:)
STATE OF TENNESSEE)

For Plaintiff in Error:

Harry U. Scruggs, Jr.
J. E. Madden
M. A.Hinds
Memphis, Tennessee

For the State:

Edgar P. Calhoun
Assistant Attorney General
Phil M. Canale, Jr.
District Attorney General

O P I N I O N

Kernes was convicted of carrying a pistol and fined $50.00 and sentenced to eleven (11) months and twenty-nine (29) days in the Shelby County Workhouse in one case, and sentenced to serve two years in the State penitentiary in another case for the possession of burglary tools. From these two convictions he has seasonably appealed, briefs have been filed, arguments heard, and, after reading this record and considering the matter, we think the record is in such a garbled condition that it is impossible to tell heads or tails about the situation so that it would be fair to either the defendant or the State to render a decision thereon. For this reason the judgments below are reversed and the cause is remanded for a new trial.

Briefly, these two cases were tried together, the defendant, Kernes, being indicted in Case No. 4724 for carrying a pistol, and Kernes and a man named James W. Tutor were jointly indicted in Case No. 4725 for possessing burglary tools. In the record there is also a copy of another indictment which charges a man named Thelma Roy Tutor with possessing burglary tools. This indictment is No. 4836. The minutes of the court indicate that cases 4724 and 4725 were tried jointly in the present proceedings. The bill of exceptions shows that Kernes entered pleas to both 4724 and 4725. The bill of exceptions does not show that the co-defendant entered a plea to the indictment in 4725, but the technical record does show that both defendants were on trial.

This statement is relevant because the entire record shows that Thelma Roy Tutor was on trial in Case No. 4725, when as a matter of fact James W.Tutor was named in the indictment. After the State had presented its case both Thelma Roy Tutor and James W. Tutor testified for the defense. A clerk of the court testified that it was James W. Tutor who was actually named in the indictment. Upon motion of the defendant for a directed verdict as toThelma Roy Tutor, the trial judge granted a mistrial as to Thelma Roy Tutor but did not direct a verdict.

The bill of exceptions is styled a "narrative bill of exceptions" on the cover page, although as a matter of fact it is

in question and answer form. There are places in the record where it appears that the court reporter experienced difficulty with his recording equipment. This information is stated because, as we have said before, the record is in such a garbled condition one reading it can't tell anything about it.

For these reasons we do not deem it advisable or necessary to comment on the various assignments made in this record. In looking at it in one way, clearly, there was no justification for a search wherein a pistol was found, nor is there any evidence to show that this defendant was guilty of possessing these burglary tools, but the record might be looked at from a different standpoint and there might be other evidence which is left out which caused the trial judge to rule as he did. It is shown that the jury was out when most of the evidence along different lines was given. There is nothing in this record to show any incidents when the jury was in whether there was sufficient evidence to convict this man. It is for this reason that the case is reversed and remanded for a new trial.

Hamilton S. Burnett, Chief Justice.

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

Division III

STATE OF TENNESSEE)
Vs.) No. 16645 and No. 16819
JAMES EARL RAY,)
Defendant

TO SAID HONORABLE COURT:

COMES NOW, James Earl Ray, Defendant in the above styled and numbered causes presently pending on the docket of this Court and files this Motion to Permit a photographer of his selection to take photographs of said defendant for the pur - pose of obtaining funds with which to prepare for the trial of his case or cases; and, in support of said motion, would res - pectfully show said Honorable Court:

I.

Defendant is advised that there is a commercial value to a series of pictures if they can be made available as exclusive to a picture magazine and that this value is respectively either $3,000.00 or $5,000.00.

II.

That there is insufficient money available to bring necessary witnesses from other States and other Countries, unless this re- quest be granted. That, if granted, all such monies derived from the sale of said pictures, will be expended in the actual prepa- ration for trial and the trial of said case or cases. That Defen- dant is without funds or monetary resources with which to prepare his case properly for trial, unless these funds be made available.

III.

Defendant says that the taking of a great number of photo - graphs will be necessary in order to obtain the two or three dozen that would comprise the selection for publication, and this would require a considerable period of time for the photographer to pre-

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pare the proper poses and lighting. Defendant says that contemplated in the above offers for photographs would be a short motion picture, but says the same photographer could take all such moving or still photographs.

IV.

Defendant says that at least two (2) such photographs would be made available without charge to the news media at large to be released b y the Sheriff of Shelby County or the Court as they see fit, but that if all such photographs were so released there would be no cash value to any of them.

V.

Defendant's attorneys have been advised by the Court that there will be no funds available from the State of Tennessee to bring witnesses from other States, and says that the value of said pictures is an intangible but valuable asset belonging to this Defendant, which can be made available only by an order of the Court permitting the taking of such pictures.

VI.

Defendant says that an effort to gain the permission of the Sheriff of Shelby County, Tennnss ee, to admit the taking of the pictures aforesaid has been without avail, but the said Sheriff has said that if an order of the Court be obtained that he will permit the taking of said pictures.

VII.

Defendant says that he will submit the name of the selected photographer to the Court and or the Sheriff of Shelby County for clearance well in advance of the taking of such photographs, and, of course said photographer would be subject to the maximum security regulations now in effect or as the Court may determine.

VIII.

Defendant says that the unusual facts and circumstances attendant upon this case, meaning the wide interest of the public and the lack of funds by the defense for effective preparation, and the availability of a purchase fee for said pictures, justi-

fy this request on the part of the Defendant, and, to deny same would be a denial of due prodess of law and would likewise deny the defendant the right to effective representation of counsel in violation of the Constitution of the United States of America.

IX.

Defendant says that if opposition be urged to this motion on the ground that the publicity attendant upon the publication of said pictures, then he is willing to have said pictures im - pounded until a jury shall have been selected.

But, to this point, Defendant respectfully would show the court that all pictures heretofore printed of this Defendant have been mug shots taken in a jail or penitentiary or one taken by the photographer for the Sheriff's office showing this defendant manacled in chains and at the end of a long journey, dishevelled and otherwis e unfavorable and opprobrious.

WHEREFORE, premises considered, Defendant prays the Court that an order issue directing the Sheriff of Shelby County, Tenn., ~~Texas~~, to admit a photographer and to permit the taking of photographs and a moving picture short of the Defendant, so that the proceeds of the sale of same may be made available for the defenne and expenses incident to the trial of this cases and motions to be heare in advance of said trial, as said Defendant, in duty bound, will ever pray.

James Earl Ray
JAMES EARL RAY

SUBSCRIBED AND sworn to at Memphis, Shelby Co., Tennessee, this 3rd day of February, A.D., 1969.

Notary Public, Shelby Co., Tennessee.
My commission expires April 28, 1969

O R D E R

The foregoing motion to permit the taking of exclusive photographs to be sold for the purpose of obtaining funds with which to prepare and pay expenses incident to the Defense of said Defendant having been presented to and considered by the Cour t this _____ day of February, A.D., 1969, the same is:

GRANTED subject to the order this day entered with relation thereto.

OVERRULED and DENIE D, to which action of the Court in over - ruling and denying said motion the Defendant, by counsel, then and there excepted, and said motion, together with this ruling thereon and Defendant's exception are ordered filed as a part of the record of this case.

W. Preston Battle, Judge.

ORDER

The foregoing motion to permit a conference with a party with whom he has a contractural relation and business dealing having been presented to and considered by the Court this _____ day of February, A.D., 1969, the same is:

GRANTED subject to the order this day entered with relation thereto.

OVERRULED AND DENIED, to which action of the Court in overruling and denying said motion the defendant, by counsel, then and there excepted, and said motion, together with this ruling thereon and defendant's exception are ordered filed as a part of the record of this case.

W. PRESTON BATTLE, JUDGE
CRIMINAL COURT, Division III
Shelby County, Tennessee

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

Division III

STATE OF TENNESSEE		
Vs.		Nos. 16645 and 16819
JAMES EARL RAY		

TO SAID HONORABLE COURT:

COMES NOW, James Earl Ray, Defendant, and files this his motion to be permitted to confer with WILLIAM BRADFORD HUIE, in support of which motion he would respectfully show the Court:

I.

The said William Bradford Huie is an author who has had contractual relations with this Defendant since the early part of July, 1968, pursuant to which some $30,000.00 was paid by said author to a former attorney for this Defendant. A disagreement arose between this Defendant and said former attorney resulting in the release of said attorney by said Defendant and likewise the release of the case by said attorney. But no part of the $30,000.00 theretofore paid by said Author to said former attorney was released or returned to this Defendant by said former attorney.

II.

A number of questions have arisen with reference to several provisions of the contracts, assignments, etc., which require discussion and conference between this Defendant and the said Wm. Bradford Huie, in order to obviate a misunderstanding and to adjust to the changes that have taken place with reference to the case and the parties since the original contracts were signed. This Defendant hopes to have available additional funds from the said Wm. Bradford Huie, but whether or not they are available the protection of this Defendant's contractual rights necessitate a detailed discussion and explanation and understanding that can only be accomplished by a discussion between said author and this defendant.

44-1987-Sub-D-98

SEARCHED.....INDEXED.....
SERIALIZED.....FILED.....
FEB 1 1969
FBI — MEMPHIS

III.

Defendant says that the maximum security facilities through which he has bee n compelled to talk with all visitors except his attorneys will not permit adequate discussion, understanding or adjustment of the terms of the existing or any future contracts. In the first place, there is no privacy. A person is required to talk through a metal network and to look through a 7" diamond shaped thick glass. Both vision and hearing is grossly impaired. One is required, to be heard ever so faintly, to shout so that his voice and words can be clearly heard over most of the entire floor. Even then, only occasional spoken words can be heard clearly. The facilities heretofore available to such visitors is calculated to create a further misunderstanding rather than to explain and thereby solve the present matters for discussion . Therefore, Defendant says that an arrangement should be ordered that will per - mit a personal, unimpeded conference between himself, his present attorney and the said Wm. Bradford Huie, either in Defendant's cell or else in the Court room or an anteroom thereto.

Defendant says that three people can not carry on a conversation through the metal wire complex and glass heretofore described. That each person has to put his ear against the metal complex in order to distinguish any speech on the opposite side and there is not room for two heads against the metal complex or tube at one time. That Defendant needs the advice of his attorney as he talks with the said Wm. Bradford Huie and in advance of any conversation or answeres to questions from the said author.

Defendant says that three or four hours will be, in his estimation, required for the discussion contemplated between him and the said Wm. Bradford Huie.

WHEREFORE, premises considered, Defendant prays that the Court enter an order directing that he be permitted free and uninterrupted and unimpeded conference and confrontation with the said Wm. Brad - ford Huie for such period of time as is necessary to discuss and come to an understanding concerning the provisions of several contracts

and agreements heretofore entered into between them and the amendments thereto and interpretation thereof necessary as a result of the change in attorneys and the parties to said contracts.

Respectfully submitted,

James Earl Ray

James Earl Ray.

SUB SCRI BE D and sworn to at Memphis, Shelby County, Tennessee this 3rd day of February, A. D., 1969.

Notary Public in and for Shelby County, Tennessee.

My commission expires April 28, 1969.

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
Division III

STATE OF TENNESSEE

VS.

NO. 16645
NO. 16819

JAMES EARL RAY,
Defendant

PETITION TO AUTHORIZE DEFENDANT TO
TAKE DEPOSITIONS OUT OF STATE

TO THE HONORABLE W. PRESTON BATTLE, JUDGE, DIVISION III,
CRIMINAL COURT, SHELBY COUNTY, TENNESSEE:

Comes the defendant, James Earl Ray, and respectfully moves the Court to authorize the taking of depositions out of the State; defendant is advised that there are material witnesses necessary to his defense outside of the State, and owing to a lack of funds to compensate the witnesses coming to and from Memphis, desires to take their depositions at the earliest practical time convenient to the Attorney General and to the arrangements necessary with said witnesses. Therefore, pursuant to T.C.A. 40-2428, defendant respectfully moves the Court to grant leave to take the depositions of the following named witnesses; and direct the Clerk to appoint necessary Commissioners to take said depositions at the time and place to either be agreed upon or fixed by the Court.

44-1987-Sub-0-99

Said witnesses are:

Warden Walter Swanson
Department of Corrections
Jefferson City, Missouri

Harry Lauf
c/o Missouri Department of Corrections
Route 5
Jefferson City, Missouri

and

U. L. Baker
1408 Clermont Drive
Aero Marine
Birmingham, Alabama

John D. Hanners
c/o Aero Marine
806 Meg Drive
Birmingham, Alabama

Peter Cherpes
2608 Highland
Birmingham, Alabama

C. E. Kirkpatrick
Birmingham Trust National Bank
Birmingham, Alabama

Clyde R. Manasco
Route 9, Box 602
Birmingham, Alabama

and

Frank Hitt
Agent in Charge
Federal Bureau of Investigation
Atlanta, Georgia

Rev. Andrew J. Young
1088 Veltre Circle S.W.
Atlanta, Georgia
or
c/o Southern Christian Leadership Conference
Atlanta, Georgia

J. D. Garner
107 14th Street N. E.
Atlanta, Georgia

Dr. William Rutherford
c/o Southern Christian Leadership Conference
Atlanta, Georgia

Rev. Lowery
c/o Southern Christian Leadership Conference
Atlanta, Georgia

Rev. Martin Luther King, Sr.
c/o Eberneza Baptist Church
Atlanta, Georgia

George Bonebreke, Agent
c/o Federal Bureau of Investigation, Washington, D. C.

PREMISES CONSIDERED, PETITIONER PRAYS:

That an order be entered directing the Clerk to appoint necessary Commissioners to take depositions at the time to be specified, with full power to continue the taking of said depositions from time to time until they are completed, and to reset the hearings thereof as is necessary.

For other, further and general relief as seems meet and proper in the premises.

ATTORNEY FOR DEFENDANT

STATE OF TENNESSEE
COUNTY OF SHELBY

Sworn to and subscribed before me this _____ day of _____, 1969, at Memphis, Tennessee.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires:

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
Division III

STATE OF TENNESSEE

VS.

NO. 16645
NO. 16819

JAMES EARL RAY,
Defendant

ORDER AUTHORIZING TAKING OF
DEPOSITIONS OUT OF STATE

This cause came on for hearing before the Honorable W. Preston Battle, Judge, Division III, Criminal Court, Shelby County, Tennessee, upon the petition of defendant to take depositions of out of State witnesses and it appearing to the Court that the application is in order and should be granted and that the time for taking depositions should be set for the earliest date practical to the convenience of the Attorney General and the witnesses. It further appeared that the defendant is indigent and without adequate funds to compensate witnesses for coming to and from Memphis, and that their depositions should therefore be taken.

IT IS ACCORDINGLY ORDERED, ADJUDGED AND DECREED that the defendant be and is authorized through his counsel to take the depositions of the witnesses as listed below:

Warden Walter Swanson
Department of Corrections
Jefferson City, Missouri

Harry Lauf
c/o Missouri Department of Corrections
Route 5
Jefferson City, Missouri

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FEB 14 1966

- MEMP.

and

U. L. Baker
1408 Clermont Drive
Aero Marine
Birmingham, Alabama

John D. Hanners
c/o Aero Marine
806 Meg Drive
Birmingham, Alabama

Peter Cherpes
2608 Highland
Birmingham, Alabama

C.E. Kirkpatrick
Birmingham Trust National Bank
Birmingham, Alabama

Clyde R. Manasco
Route 9, Box 602
Birmingham, Alabama

and

Frank Hitt
Agent in Charge
Federal Bureau of Investigation
Atlanta, Georgia

Rev. Andrew J. Young
1088 Veltre Circle S.W.
Atlanta, Georgia
or
c/o Southern Christian Leadership Conference
Atlanta, Georgia

J. D. Garner
107 14th Street N.E.
Atlanta, Georgia

Dr. William Rutherford
c/o Southern Christian Leadership Conference
Atlanta, Georgia

Rev. Lowery
c/o Southern Christian Leadership Conference
Atlanta, Georgia

Rev. Martin Luther King, Sr.
c/o Eberneza Baptist Church
Atlanta, Georgia

and:

George Bonebreke, Agent
c/o Federal Bureau of Investigation
Washington, D. C.

IT IS FURTHER ORDERED AND ADJUDGED that the Clerk be and is directed to issue necessary commissions to Commissioners to take the depositions, giving said Commissioners full plenary power to subpoena said witnesses and continue the hearing thereof from time to time until the said depositions have been completed.

Enter this _____day of _____, 1969.

JUDGE
CRIMINAL COURT, Division III
SHELBY COUNTY, TENNESSEE

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
Division III

STATE OF TENNESSEE

VS. NO. 16645

JAMES EARL RAY,
Defendant

MOTION TO REQUIRE THE RETURN OF A STATE'S SUBPOENA TO THE CLERK OF THE CRIMINAL COURT

TO THE HONORABLE W. PRESTON BATTLE, JUDGE, CRIMINAL COURT, SHELBY COUNTY, TENNESSEE:

Defendant, James Earl Ray, is presently under indictment for the offense of Murder in the First Degree in the above numbered cause. His case was previously set for trial on November 12, 1968. Prior to that time the Clerk of the Criminal Court of Shelby County, at the instance of the State of Tennessee, issued a subpoena requiring the attendance of certain witnesses in this Court on November 12, 1968. This subpoena has never been returned to the Criminal Court Clerk's office by the Deputy Sheriff who served it, or by any other person. The defense subpoena, issued by the Clerk for the same trial date, is in the records of this cause.

Wherefore, defendant moves the Court for an order requiring the Sheriff of Shelby County or his Deputy, or whomever the proof may show to be in possession of said subpoena to return it to the Clerk of the Criminal

44-1987-Sub-O-101

Court of Shelby County, there to be filed with the other records and papers in this cause.

ATTORNEYS FOR DEFENDANT

CERTIFICATE

I, Hugh W. Stanton, Jr., do hereby certify that I have delivered a copy of the foregoing pleading to the Honorable Phil M. Canale, Jr., Attorney General, Shelby County Office Building, this _____day of February, 1969.

HUGH W. STANTON, JR.

2/14/69

AIRTEL

TO: DIRECTOR, FBI (44-38861)

FROM: SAC, MEMPHIS (44-1987) (P)

SUBJECT: MURKIN

Enclosed for the Bureau are two copies each of three motions having to do with a continuance; with the designation of court reporters; and with stipulations as to the undisputed testimony of witnesses.

On 2/14/69, motions made by the defense were argued before Judge W. PRESTON BATTLE, Memphis, Tenn. The results are as follows:

1. MOTION TO REQUIRE THE RETURN OF A STATE'S SUBPOENA TO THE CLERK OF THE CRIMINAL COURT

This motion relates to defense attorneys' desire to know the identity of the individuals already subpoenaed by the prosecution for the trial of JAMES EARL RAY. The prosecution has thus far avoided having the executed subpoenas returned to the Clerk of the Court, and the prosecution contends that they do not desire the news media to learn the identity of winesses under subpoena. Judge BATTLE has now ruled that the executed subpoenas must be returned to the Clerk, however, they are not to be made a matter of public record and only attorneys for the defense are to be made aware of the prosecution's witnesses. After defense attorneys have examined the subpoenas, they are to be given to Judge BATTLE for safekeeping. Copies of this motion have previously been furnished the Bureau.

44-1987-Sub D-102

3 - Bureau (Encs. 6)
(2) - Memphis

JCH:jap
(5)

2. MOTION TO DELETE FROM THE INDICTMENT THE ALIASES ERIC STARVO GALT, JOHN WILLARD, AND HARVEY LOHMEYER.

On 2/14/69, Judge BATTLE denied this motion, stating that the defendant RAY was responsible for the use of these aliases and that the prosecution had indicated they would present evidence to prove such use. It had been the contention of the defense that the reading of the indictment with these aliases to the jury would be prejudicial and inflammatory. Copies of this motion have previously been furnished the Bureau.

3. MOTION TO DESIGNATE COURT REPORTERS AND PROVIDE FOR COMPENSATION BY THE STATE OF TENNESSEE

It is customary in Tennessee courts to have testimony taken by a mechanical recording rather than by a live court reporter. Such is the practice in Judge BATTLE's court. The defense has argued that such taking of testimony is not reliable and has requested the court to designate and to provide compensation for a live reporter. On 2/14/69, Judge BATTLE denied this motion but agreed to allow FOREMAN to have a live reporter in the courtroom provided this reporter is compensated by the defense.

4. MOTION TO REQUIRE DISTRICT ATTORNEY GENERAL TO PREPARE AND PRESENT TO THE COURT PROPOSED STIPULATIONS AS TO THE UNDISPUTED TESTIMONY OF WITNESSES

The defense has argued that the prosecution is in possession of written FBI reports and is aware of the testimony that will be given by various witnesses who have been subpoenaed both from out of state and from outside this country. The defense desires that these be made available to them and states that in many instances the defense will agree to stipulation of testimony by certain witnesses, thus making it unnecessary to have them brought at State expense to Memphis. The prosecution contends that this is merely an attempt by the defense to discover in advance the testimony to be given by prosecution witnesses.

Judge BATTLE denied this, stating that he does not desire to coerce the prosecution into agreeing to the stipulation of testimony.

0-9 (Rev. 4-22-64)

F B I

Date: 2-14-69

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Priority)

To: SAC, Memphis (44-1987)

From: Director, FBI (44-38861)

Documents

MURKIN

ReMEairtel to the Bureau dated 2-8-69.

In your referenced communication you advised that in state court on February 7, 1969, before Judge W. Preston Battle, a petition to authorize defendant to take depositions out of state was argued. The defense, during this argument, indicated that they desired SAC Hitt, Atlanta Office, and J. D. Garner (operator of rooming house where Ray resided Atlanta, Georgia) be interviewed regarding the admissibility of evidence. During this argument, Judge Battle refused to allow depositions be taken from SAC Hitt and J. D. Garner, but the Judge stated he was agreeable to have SAC Hitt and J. D. Garner appear in his court for a pretrial suppression hearing. You advised on February 11, 1969, no motion has been filed to suppress the evidence obtained from this rooming house by our Agents.

If and when such motion to suppress is filed, you should obtain a copy of same and immediately forward it to the Bureau for review. You should also furnish a copy of the motion to the Atlanta Office for their review.

Keep the Bureau fully advised of all developments along the above lines.

1 - Atlanta (44-2386) (for info)

44-1987-Sub-O-163

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Sent Via _____ M Per _____