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IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS
THE THIRTIETH JUDICIAL DISTRICT

JAMES EARL RAY,)
 Petitioner,)
vs.)
STATE OF TENNESSEE,)
 Respondent.)

Case No. P-12454

PROCEEDINGS
APRIL 16, 1997

THE HONORABLE JOSEPH B. BROWN, JR., PRESIDING JUDGE

APPEARANCES

FOR THE PETITIONER:

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Attorney at Law
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Memphis, Tennessee 38103

FOR THE RESPONDENT:

Mr. John Campbell
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Reported by:

KATE SLAYDEN
Court Reporter

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1 IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

2 DIVISION IX

3
4 JAMES EARL RAY,)
5 vs.)
6 STATE OF TENNESSEE.) Case No. P-12454

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8
9 This cause came on to be heard and was heard on the
10 16th day of April, 1997, before the Honorable Joseph B. Brown,
11 Jr., and the following proceedings were had:

12 THE COURT: All right. Counselor, I see you're here.

13 MR. McNEIL: Judge, may I state what I understand
14 matters are? I --

15 THE COURT: Let me -- no, we're not going to have you
16 do that. What we're doing is this court is going to order the
17 protocols for the testing of this rifle. That's what -- the
18 Court of Criminal Appeals did it, I believe. General Gibbons is
19 the duly appointed attorney general for this district. We will
20 proceed. Now, I assume somebody is going to be here for the
21 state; but we're ready to proceed at this time one way or the
22 other.

23 Now, gentlemen, let me get one thing very clear and
24 straight with everybody involved here. This court is going to
25 brook no more delay on this case. I am advised unofficially of

1 an action the state has attempted to file down in Division 8.
2 This court does not acknowledge the legitimacy of that. It is
3 before this court. Rule 4.02 says that once the matter is set in
4 one court, it will remain in that.

5 This thing has been here for a while. No objection
6 has been posed of this court's jurisdiction. There will be no
7 further delay. If the state is going to exercise an opportunity
8 to appeal, it will do so; but we're going to move this along.

9 Now --

10 MR. CAMPBELL: May the state be heard, Your Honor?

11 THE COURT: Not at this point in time. We're going
12 to proceed on one thing. Your motion has been denied to have
13 this transferred back to the clerk's office for reassignment.

14 In 1992 there was number six, that is post-conviction
15 relief number six, filed before the Honorable John P. Colton,
16 Jr., presiding in Division 3. That matter was denied. One was
17 filed in 1994, which was petition number seven, which was
18 assigned through random rotation to this division.

19 In 1992 at the end, this court adopted -- or rather
20 the courts in the Thirtieth Judicial District, State of Tennessee
21 Criminal Courts adopted a modification of the local rules due to
22 the extremely high number of post-conviction relief petitions
23 that were filed relative to actions in a certain division of this
24 court, the honorable judge presiding now retired. Because of
25 that high number of petitions filed in that singular division,

1 the previous rule -- local rule of court had been modified that
2 required that post-conviction relief petitions would be heard in
3 the division where the action or the matter complained of
4 originated.

5 Now, since 1992, the end thereof, all post-conviction
6 relief petitions filed relative to action taken by any court have
7 been assigned on a random rotational basis. This court on a
8 random rotational basis was required to preside over petition for
9 post-conviction relief number seven filed by James Earl Ray.

10 This court ordered certain action to be taken. The
11 state of Tennessee secured a stay from the Court of Criminal
12 Appeals as per that action. That stay was dissolved. The order
13 of this court is now back in effect. The rifle will be tested.
14 We are now going to set up the protocol for that testing.

15 The second thing that we're going to deal with, it
16 will not happen again ever that if something is filed by the
17 Court of Criminal Appeals and transmitted electronically to the
18 clerk of this court, this court will receive notice immediately.

19 [REDACTED]
20 Ap [REDACTED] ly /
21 a [REDACTED] her,
22 t [REDACTED]
23 se [REDACTED]
24 A [REDACTED] The news media
25 and everybody and his mother has been apprised of what those

1 things are in those orders except this court. That will cease
2 and desist.

3 Additionally, we're going to have a full hearing
4 relative to the custody and control of certain matters in
5 evidence. [REDACTED]

6 [REDACTED] 1

7 [REDACTED] That was
8 relative to an incident when someone known to the court or at
9 least [REDACTED]

10 [REDACTED] e 2

11 P [REDACTED] t.

12 P [REDACTED]

13 Now, we will examine the [REDACTED] relative to
14 that evidence. [REDACTED] 3

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] and specifically so that it might
18 have some bearing on the balance of the Court of Criminal
19 Appeals' orders what the chain of custody is relative to the
20 death slug in this case.

21 The court has noted that [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED] The jacket was integral to
25 the core of the bullet. It was mushroomed, but it was in one

1 piece. Somehow or another between the furnishing of that
2 projectile to the FBI Crime Lab for tests, what we got back in
3 this jurisdiction was slivers of the bullet core, lead core, and
4 jacket strips. The bullet was no longer intact.

5 Be that as it may, that's what we have before us.
6 Now, the court faults no one who was representing the state and
7 their actions that were taken in 1968 or '69. They appeared to
8 have been appropriate to the time and place.

9 Now, what we're going to deal with today is the
10 protocol. We will determine where we're going to test it, and
11 whether there should be any deviation from that test being
12 conducted at the sheriff's department range. That's out near the
13 penal farm. Further, to deal with the custody and control of the
14 matter, that rifle will be carried by a bailiff of this court to
15 said range. The court will accompany that rifle. The court will
16 ride along with it.

17 I believe you had arranged for Mr. Cliff Dates
18 (spelled phonetically) who conducts the building security for
19 this building, the civil courthouse, and also for the federal
20 courthouse, the federal building, to actually do the firing. He
21 has been entrusted with the security of the personnel and the
22 judges in this building. He also is a former policeman, trained
23 law enforcement officer, and appears capable of firing said
24 weapon.

25 I believe that the petitioners have a proposed bullet

1 trap. We will inquire shortly as to whether that bullet trap is
2 readily available and when it can be transported to that location
3 to carry out the tests. Further, we will arrange at this time
4 for those persons who are to be present and witnessing the tests
5 on behalf of the petitioner and on behalf of the state and the
6 number of rounds that will be fired.

7 Also the court will propose the following protocol.

8 Due to the fact that apparently this rifle has never been cleaned
9 since its receipt into evidence and quite a number of rounds had
10 been fired through it, the court has a concern that jacket filing
11 will have obscured the signature or the bores sufficient that no
12 tests could be validly conducted.

13 Therefore, the court unless given information to the
14 contrary will direct that 15 rounds be fired through the bore as
15 is. After the 15 rounds have been fired, an appropriate cleaning
16 solution will be used to cause the metal filing in the bore to be
17 removed. At that point, the court will direct that a further 15
18 rounds be fired with appropriate cleaning between each round.
19 Thereafter, a total of 20 rounds in sequence will be fired and
20 carefully noted so that the filing of the bore can build up and
21 there can be a sequential availability of evidence to be
22 subjected to analysis to see if we can get the bore condition
23 closely proximate to that it was in at the time the rifle was
24 allegedly used in the homicide that is the question before the
25 court.

1 Now, we will require that the petitioners provide
2 suitable ammunition. I understand there's been an intervention
3 of approximately 30-some years since this weapon was allegedly
4 involved in this offense. However, we will attempt to get
5 projectiles that will match the suspect's slug in terms of
6 grains, weight, and characteristics in terms of brand of the
7 ammunition or if any such original ammunition not involved in
8 this case is available. We will conduct such tests, and we will
9 hear further information if anybody has any to present to the
10 court relative to such conduct of tests.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] and
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]ng.

20 I see Mr. Key is here. Mr. Key, respectfully, this
21 is not addressed to you; but for some reason, [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 forthwith to the court, [REDACTED]
25 [REDACTED] I'll talk with you about that. I'd

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1 like you to look into that so this court does not find itself
2 being in the position of finding out orders from the Court of
3 Criminal Appeals, relative to its actions, from the news media. I
4 think that's inappropriate.

5 Additionally, the court notes that transmitted to
6 Joseph B. Brown, Jr.; Criminal Court Judge; 201 Poplar; Memphis,
7 Tennessee 38103. James Earl Ray versus State of Tennessee.
8 Cause 02C01-9703-CR-00107. Notice. Please take notice of the
9 following actions. Filing date, 4/9/97.

10 Now, there are some requirements that are set forth
11 in that notice; and they are directed to this court. We will
12 note the following. This is a trial court. The next level up,
13 that is the Court of Criminal Appeals, is an appellate court.
14 The next left up from that is the Supreme Court of the state.
15 Again, an appellate court. Generically, the court is to try
16 cases. The courts that have general jurisdictions are known as
17 trial courts. Specifically, in the case history and the order
18 contained in this cause filed by the Court of Criminal Appeals,
19 April 9, 1997, we have the specific language.

20 This case has been the subject of extensive appellate
21 review in both the state and federal courts. Citing below the
22 detailed analysis and synopsis of those filings. In January,
23 1994, the petitioner filed his seventh petition for
24 post-conviction relief which, in essence, advanced a claim of
25 actual innocence. In fact, in January, 1994, this case was filed

1 and assigned upon random rotational assignment to this court.
2 That is the claim of actual innocence that was before this
3 court.

4 In support thereof, the petitioner moved "the trial
5 court" to allow the testing of the alleged murder weapon for the
6 purpose of a ballistic analysis. "The trial court" granted the
7 petitioner's motion for the testing on June 6, 1994.

8 Pursuant to an extraordinary appeal filed by the
9 state, this court entered an order on September 13, 1994,
10 staying "the trial court" from granting any orders for inspection
11 and testing of physical evidence and from conducting any hearing
12 for the purpose of receiving the petitioner's claim of actual
13 innocence; etcetera, etcetera.

14 Now, moreover, this court was concerned that the
15 evidence in question could be significantly altered or
16 destroyed by the proposed testing procedures. "The trial court"
17 ultimately denied the petition for post-conviction relief in
18 December, 1994. Now, except for Post-Conviction Procedure Act of
19 1994, discussing this, it says because of this court's previous
20 order, however, "the trial court" was precluded from allowing the
21 petitioner to proceed with the testing.

22 Now, further, court's plenary power over evidence in
23 the clerk's office. Now, Rule 6.09, Rules of the Shelby County
24 Criminal Court, provides that all records shall be under the
25 custody and control of the clerk of that court and that no

1 records shall be withdrawn from the clerk's office except by a
2 judge, clerk, or attorney with the permission of the judge or
3 clerk.

4 Now, it says access to the items at issue here, which
5 are in the custody of the Clerk's Office of the Shelby County
6 Criminal Court is not unlimited but is subject to the control of
7 the trial judge who has the discretion to deny inspection if the
8 judge deems it necessary for the preservation of the record.

9 Furthermore, a "trial court" has the inherent
10 authority to determine the custody and control of evidence held
11 in the clerk's office. This plenary power exists regardless of
12 the application and non-application of the post-conviction
13 statutes. Now, "the trial court" has the discretion to determine
14 not only whether custody and control of such evidence may be
15 granted to another but also the terms and conditions of such
16 custody.

17 Now, although "the trial court" wrongfully attempted
18 to allow testing of the physical evidence under the
19 post-conviction relief statute, the attempt was in fact an
20 exercise of the "trial court's" inherent plenary authority over
21 evidence in the clerk's possession. "A trial court" has such
22 discretionary authority; etcetera, etcetera.

23 Now, disposition of issues. In his first issue he
24 requests this court to allow "the trial court" to open his
25 petition for post-conviction relief and hold an evidentiary

1 hearing on the merits. Holding of the Court of Criminal
2 Appeals. "This issue is premature." Now, "the trial court"
3 pursuant to Tennessee Code Annotated, etcetera, must find that
4 new scientific evidence, in and of itself, establishes actual
5 innocence. This would require an examination of all the
6 evidence, not just this one piece of evidence. Certainly, we
7 offer no speculation as to the future of this litigation. Since
8 petitioner's request that this court allow the reopening of his
9 petition for post-conviction relief is premature, it is denied.

10 As to the second issue, the petitioner requests
11 "dissolution of the stay order previously entered by this
12 court." Having reviewed the issue, we find that the basis
13 for this court's previous stay order are no longer present
14 because (1) the Post-Conviction Procedure Act has been amended,
15 etcetera; (2) "the trial court" found that the ballistic material
16 in evidence will not be significantly damaged, destroyed nor
17 altered by the testing proposed by the petitioner. Therefore,
18 the stay order should be dissolved. This court is in fact the
19 court that made that finding and forwarded those findings
20 pursuant to its order to the Court of Criminal Appeals.

21 In summary, we conclude (2) "the trial court" has the
22 discretionary, plenary authority to determine whether a party can
23 obtain custody of evidence in the clerk's office; (3) "the trial
24 court" must determine the terms and conditions of the custody and
25 testing after giving both parties an opportunity to be heard.

1 Now, that's signed by the Honorable Paul G. Summers,
2 Judge; and David G. Hayes, Judge; and Joe G. Riley, Judge; all
3 the right and honorable. It should be noted that the author
4 of this opinion, the right Honorable Paul G. Summers,
5 dissented in the initial stay and voted to deny the application
6 for extraordinary relief, dissent arguing that the trial
7 court's actions, quote/unquote, did not require immediate review
8 because there was no abuse of discretion.

9 Judge Summers opined that the "trial judge was
10 exercising discretionary authority and control over the
11 exhibits." Now, there's no one that could be referred to other
12 than this court in the rulings and in the history of this case.
13 This is petition number seven. This matter is before this
14 court. There will be no delay. If you can get whomever to file
15 an appeal between now and whenever, you may file it. However, we
16 will now proceed to avoid undue delay before the petitioner in
17 this case has his physical condition deteriorate to the point
18 where it may become moot.

19 Now, Mr. McNeil, can you have your parties ready to
20 proceed by Monday next?

21 MR. McNEIL: Judge, I'll have to talk to Mr. Pepper.

22 THE COURT: You find out.

23 MR. McNEIL: Yes, sir.

24 THE COURT: We'll set that tentatively by Monday the
25 test will be conducted. What is Monday?

1 THE CLERK: April 21st.

2 THE COURT: April 21st. We will arrange some time
3 during the day for the court to take off and have one of its
4 bailiffs transmit the evidence from the property room out to the
5 sheriff's department range and appropriate arrangements will be
6 made. If you cannot proceed accordingly or somebody has a delay
7 that they need to bring before the court or need for such delay
8 because they cannot get their experts present, please advise the
9 court within the next two days. Otherwise, we will proceed as
10 ordered.

11 Now, we have another matter. [REDACTED]

12 [REDACTED]
13 [REDACTED] Somebody needs to get that to this court. You
14 may present it to the assistant clerks of this court at the
15 appropriate time. [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 Now, I think that's going to resolve all the issues.
21 You, gentlemen, I suggest you get with me before this week is out
22 to see if there are going to be any problems with this. We will
23 finalize otherwise through this court's written order the testing
24 procedure. Now, you need to get with me if you have any
25 problems. State, if you don't like what we're doing here, you

1 may file for a stay or an order from the Court of Criminal
2 Appeals. Now, that's the end of the matter. Do you have
3 anything further to say? Thank you.

4
5 (Recess.)

6
7 THE COURT: Also relative to the previous matter,
8 it's this court's order that no one is to handle that weapon
9 until the court gives further permission and it will do something
10 about that tomorrow. It's to be sealed. If anybody touches it,
11 they will be doing it on paying a contempt to this court.

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15 (END OF REQUESTED PROCEEDINGS)

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CERTIFICATE

I, the undersigned, Kate A. Slayden, Court Reporter for the Thirtieth Judicial District of the State of Tennessee, do hereby certify that the foregoing is a true, accurate, and complete transcript, to the best of my knowledge, understanding and ability, of all the proceedings had in the above-captioned cause in the Criminal Court for Shelby County, Tennessee, before the Honorable Joseph B. Brown, Jr., on the 16th day of April, 1997.

I do further certify that I am neither of kin, counsel, nor interest to any party thereto.

April 17, 19 97

Court Reporter
State of Tennessee

COPY