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IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE  
Division III

STATE OF TENNESSEE

VS.

NO. B-16645

JAMES EARL RAY,  
Defendant

MEMORANDUM OF POINTS AND AUTHORITIES  
RE: RETURN OF A STATE SUBPOENA TO THE  
CLERK OF THE CRIMINAL COURT

STATEMENT OF FACTS

Defendant, James Earl Ray, is presently under indictment for the offense of Murder in the First Degree in this 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 State witnesses in this Court on November 12, 1968. According to the testimony of Mr. J. A. Blackwell, Clerk of the Criminal Court, the State subpoena was in the hands of the Deputy Clerk assigned to this Court, having been delivered to him by the Deputy Sheriff on November 12, 1968. It was returned to the Attorney General's Office at the request of Mr. James Beasley. Counsel for the State stated in open Court that the State subpoena is presently in the possession of the Attorney General, and has never been returned to the Criminal Court Clerk's Office.

The defense subpoena, issued by the Clerk for the same trial date, is and has been on file in the records of this cause in the Clerk's Office.

### POINTS AND AUTHORITIES

T. C. A. Section 18-105, prescribes the duties of the Clerk of each of the courts, and sub-section (1) is as follows:

- (1) To sign all summons, writs, subpoenas, executions, and process issued from his court, and to endorse on the back thereof the date of issuance.

Sub-section 8 of the same statute is as follows:

- (8) To keep all the papers, books, dockets, and records belonging to his office, with care and security; the papers filed, arranged, numbered and labeled, so as to be of easy reference; and the books, dockets, and records properly lettered; and to allow parties to inspect the records free of charge.

Counsel for defendant have not been allowed to inspect the subpoena issued by the State, as authorized by the above sub-section. The statute specifically authorizes the Clerk to issue process and subpoenas from his Court, and then requires that he keep the papers "belonging to his office." Certainly, a subpoena is a paper "belonging to his office".

T. C. A. Section 8-2115, authorizes the Clerk to charge a fee for issuance of a subpoena, and is as follows:

T.C.A. 8-2115 - Clerks of court - Specific fees authorized. - The clerks of the several courts are allowed to demand and receive for the following services the fees thereto attached:

- |   |     |
|---|-----|
| (10) For issuing subpoena for witness, each witness -         | .50 |
| (11) For issuing subpoena to bring in paper or record, etc. - | .75 |

The Sheriff is authorized by T. C. A. 8-2133, to charge for serving a subpoena.

T. C. A. 8-2133, is as follows:

Sheriffs and constables - Specific fees authorized. - The sheriff or constable is allowed to demand and receive for the following services the respective following fees:

- |   |      |
|---|------|
| (26) For serving a subpoena to testify for each witness - | 1.00 |
|---|------|

The Clerk of the Criminal Court collects this fee for the Sheriff as part of the Bill of Costs, and under T. C. A. 8-2115, Sub-section 51, receives two and one-half cents (2 1/2) on each dollar collected, as a fee for the service.

T. C. A. 8-2115 (51), is as follows:

For receiving and paying over taxes, fines, forfeitures and amercements, two and a half cents (2 1/2¢) on the dollar.

In order to make the authorized charges, both for the issuance and the service of a State subpoena, the subpoena must be a part of the

record. According to the testimony heard in open Court, the usual procedure is for the Court Deputy, who served the subpoena, to deliver it to the Assistant Attorney General, responsible for the trial of the case, on the morning that the case is set for trial. The Attorney General then returns the subpoena to the Clerk and it is filed in the cause.

This same practice is not followed for defense subpoenas, as they are simply returned to the office of the Clerk by the Sheriff after they have been served. Thus, defense subpoenas are available for inspection by the Attorney General or anyone, they being a part of a public record. To deny defendant this same right of inspection is simply unfair.

It is, therefore, respectfully submitted that defendant's Motion to Require the Return to the Clerk's Office of a State's Subpoena, admittedly in possession of the State, should be granted.

Respectfully submitted,

PERCY FOREMAN

HUGH STANTON, SR.

HUGH W. STANTON, JR.

#### CERTIFICATE

I, Hugh W. Stanton, Jr., certify that I have this day delivered a copy of the foregoing Memorandum of Points and Authorities to the District Attorney General.

February \_\_\_\_\_, 1969.

HUGH W. STANTON, JR.