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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.

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 Sessions 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 attorneys 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

of approximately 1,000,000 or more inhabitants and having within its territorial area at least 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 process 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 proceedings'.

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 murder with malice aforethought 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 or 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 subh legally unauthorized employees of the various letter serfices, 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 artfcles 40-2029 through 40-2043, aforesaid, and espec- ially of article 40-2038 which provides:

"The reporters shall be subject to the supervision of the appointing judge in the performance of their du- ties, 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 limita- tion 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 report- ers 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 proceedings as the court may deem first, suitable and proper, as said Defendant, in duty bound, will ever pray.


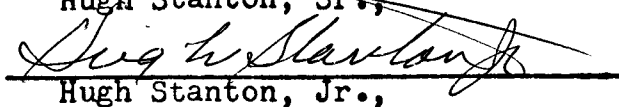
  
\_\_\_\_\_  
JAMES EARL RAY, Defendant

STATE OF TENNESSEE |  
COUNTY OF SHELBY |

SUBSCRIBED AND sworn 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, Jr.,

PUBLIC DEFENDER'S OFFICE  
SHELBY CO., TENNESSEE.

\_\_\_\_\_  
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 Tennessee and to enter an order controlling the sale, dissemination, circulation 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