9/16/69

AIRTEL AIRMAIL - REGISTERED

TO: DIRECTOR, FBI (44-38861)

FROM: SAC, SAN FRANCISCO (173-65)

SUBJECT: MURKIN

OO: MEMPHIS

Re Bureau letter, dated 9/11/69.

Enclosed for the Bureau are six copies of a letterhead memorandum captioned "T. WAYNE [redacted]. Two copies of the letterhead memorandum are enclosed for the Memphis Office.

San Francisco is of the opinion that no additional investigation should be conducted in this matter in view of the fact that BOBBY SEALE at the time of KING's death appeared to be involved in some type of quarrel with his attorney.

2 - Bureau (Encs. 6)(RM)
2 - Memphis (44-1987)(Encs. 2)(AM)(RM)
1 - San Francisco
MTG/sms #11
(5)

44-1987-Sub-M-682

SEARCHED INDEXED
SERIALIZED FILED
SEP 19 1969
FBI - MEMPHIS

LLOYD A. RHODES
EXECUTIVE ASSISTANT

WILLIAM D. HAYNES
ADMINISTRATIVE ASSISTANT

JOHN L. CARLISLE
H. J. BEACH
E. L. HUTCHINSON, JR.
CLYDE R. VENSON
CRIMINAL INVESTIGATORS

EARL E. FITZPATRICK
NON-SUPPORT DIVISION

PHIL M. CANALE, JR.
DISTRICT ATTORNEY GENERAL
FIFTEENTH JUDICIAL CIRCUIT OF TENNESSEE
COUNTY OF SHELBY

SHELBY COUNTY OFFICE BUILDING
157 POPLAR AVENUE
MEMPHIS, TENN. 38103

ASSISTANTS
EWELL C. RICHARDSON
JEWETT H. MILLER
J. CLYDE MASON
SAM J. CATANZARO
LEONARD T. LAFFERTY
ARTHUR T. BENNETT
DON D. STROTHER
DON A. DINO
JOSEPH L. PATTERSON
BILLY F. GRAY
EUGENE C. GAERIG
HARVEY HERRIN
F. GLEN SISSON
JOHN W. PIEROTTI
JAMES G. HALL
JAMES H. ALLEN

September 17, 1969

The Commissioner
Royal Canadian Mounted Police
Ottawa 7, Canada

Attention: Inspector J. A. Macauley

Dear Sir:

Your letter of August 28, 1969 to Mr. Moss Lee Innes, United States Embassy, Ottawa, Ontario, has been referred to our office for answer.

This is to advise that the guilty plea in the Ray Case is at this time on appeal. A question of law has arisen due to the death of the trial judge who handled the guilty plea. The appeal has been denied by the Tennessee Court of Criminal Appeals and a Writ of Certiorari is being sought to the Tennessee Supreme Court by defense counsel at this time.

If we can provide any further information, we will be happy to do so.

Very truly yours,

J. Clyde Mason

J. CLYDE MASON
Assistant Attorney General

JCM/bk

44-1987-Sub. M-623

DIRECTOR, FBI (44-38861) 9/19/69

SAC, MEMPHIS (44-1987) (P)

MURKIN

Reference is made to the RCMP's inquiry directed to Legat, Ottawa, under date of 8/28/69, asking whether or not it would be proper for them to make mention in a magazine article of commendations given to two RCMP officers for their work in this case.

Enclosed for the Bureau are 2 copies of a letter dated 9/17/69 from Assistant District Attorney General J. CLYDE MASON to the Commissioner of the RCMP at Ottawa.

2 - Bureau (Encs. 2)
1 - Memphis
JCH:jap
(3)

SEA
SE
IN
T

44-1987-Sub-M-684

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

September 25, 1969

JAMES EARL RAY
ASSASSINATION OF MARTIN LUTHER KING, JR.

With respect to the inquiry by the Royal Canadian Mounted Police (RCMP) relative to publication in a magazine of information concerning commendations given to members of the RCMP in the James Earl Ray case, the Civil Rights Division of the U. S. Department of Justice, Washington, D. C., has advised as follows:

"Assuming that the prosecutive authorities of Shelby County, Tennessee, have no objection to the release of such information, on the basis of the prior court order limiting pre-trial publicity, or otherwise, it is our view that the R.C.M.P. should limit their release of information to their role in apprehending the fugitive; and that their other investigative activity, particularly with respect to whether Ray was part of a conspiracy to kill Dr. King, should not be discussed."

This is for your information.

44-1987-Sub-A-6844

Hester

LEGAT, Ottawa (44-4) 9-25-69

Director, FBI (44-38861)

MURKIN

ReBulet 9-18-69.

Enclosed are two copies of a letterhead memorandum setting forth views of the Civil Rights Division relative to the RCMP's inquiry on possible publication in a national magazine of the commendations given members of the RCMP in connection with the James Earl Ray investigation.

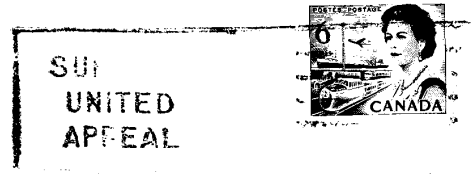
You may furnish a copy of this letterhead memorandum to the RCMP and if they have any further questions suggest that they may desire to communicate directly with Assistant Attorney General Jerris Leonard, Civil Rights Division, U. S. Department of Justice, Washington, D. C. Of course there is no objection to you forwarding any further inquiries from the RCMP along these lines.

Enclosures (2)

1 - Memphis (Info) (Enclosure) (44-1987)

44-1987-Sub-M-6843

Hester



Robert Jensen
C/O Federal Bureau of Investigation
F. B. I.
Memphis Tenn.,
U. S. A.

Port arthur
Ontario,
Canada.

#44-38 S. Cumberland
Port arthur
ontario
Canada
Sept. 22/49.

Robert,

Shopping in a dime store the other day and idea dawned on me.

I figured I know how you look, but you don't know how I look.

This dime store was equipped with picture taking equipement (4 pictures for 25¢)

It dawned on me I should send you a mug shot of myself.

Robert, you won't find my picture in your mug shot files, nor in any mug shot files of any other, Police agencies, in your country, or of mine. I keep these photos for your Cuckoo File!

Best Regards, Paul Danylchuk.

P.S. — Tawse our Buddy Norman Green (Greene) coming along?

44-1987-Sub-M-684A

~~44-1987-Sub-M-6~~

DIRECTOR, FBI (44-38861) 9/29/69

SAC, BUTTE (173-2) (RUC)

MURKIN
CR
CO: Memphis

Remyairtel, 7/24/69.

On 8/21/69, MYRNA McCARVER was contacted at 1060 Katherine Avenue, Idaho Falls, Idaho, at which time she advised that she is married to MORRIS McCARVER.

Mrs. McCARVER stated that MORRIS McCARVER was working for RANDELL BARNEY, out of Mud Lake, Idaho, during the early summer of 1969, and quit that job because of some comments made by BARNEY sometime around the first of August, 1969. She stated that BARNEY gave she and her husband a ride to Mud Lake where she stayed at a motel. She assumed that her husband was also staying there; however, he left the area and has not returned.

She has not heard from him since that time, but thinks that he is in the area somewhere working. However, she is not going to make any effort to locate him. Mrs. McCARVER stated that she feels sooner or later McCARVER will be in touch with her. She pointed out that McCARVER is a good man when he is sober and is a hard working individual. She stated that she feels sometimes, when he starts drinking a little bit excessively, he gets "wild ideas" and does certain things which she cannot explain.

Mrs. McCARVER stated that she will certainly tell MORRIS McCARVER, when she sees him, that if he is desirous of having the FBI check his record at the Topeka State Hospital, Topeka, Kansas, he can stop at the FBI Office in Idaho Falls and advise them personally that they can check his record.

44-1987-Sub-M-684C

SEARCHED ____ INDEXED ____
SERIALIZED ____ FILED ____
FBI

2 - Bureau (Reg.)
2 - Memphis (44-1987) (Reg.)
1 - Butte
BSP/sdt
(5)

DIRECTOR, FBI (44-38861) 9/30/69

SAC, KNOXVILLE (44-696)(RUC)

MURKIN

Re Knoxville letter to Bureau 7/29/69.

A review of the Knoxville file concerning this subject shows that no investigation remains to be done in the Knoxville Division at the present time.

This file is being placed in a closed status at Knoxville.

2 - Bureau
2 - Memphis (44-1987)
1 - Knoxville

JLF:lhm
(5)

44-1987-Sub-M-685

10-6-69

AIRTEL

To: SAC, Birmingham (44-1740)

From: Director, FBI (44-38861)

MURKIN

Reurairtel 9-26-69.

You should interview Arthur Hanes for all details he may have relative to alleged gunrunning conspiracy involving James Earl Ray as outlindd in urairtel 9-26-69, in order that appropriate action can be taken to run out such allegations. Hanes should be thoroughly pinned down for specifics.

For your additional information you will recall that only one bullet slug was recovered from King's body which was mutilated to the extent that it could not be identified as having been fired from the suspect gun although it was the type of projectile which could have been fired from such weapon.

Handle and advise results of interview within 5 days and include your recommendations as to any further action to be taken on the results of this interview. SuLHM suitable for dissemination on pertinent information in reairtel and results of interview. Conduct no investigation on this aspect UACB.

1 - Memphis (Info) (44-1987)

44-1987-Sub-M-686

SEARCHED____INDEXED____
SERIALIZED____FILED____
OCT 3 1969
FBI—MEMPHIS

See Reverse Side

TO THE HONORABLE SUPREME COURT OF THE STATE OF TENNESSEE, SITTING AT JACKSON, TENNESSEE, OR TO ANY OF THE JUDGES THEREOF:

STATE OF TENNESSEE	FROM THE CRIMINAL COURT
VS	OF
JAMES EARL RAY	SHELBY COUNTY, TENNESSEE

PETITION OF JAMES EARL RAY FOR
WRIT OF CERTIORARI

Your petitioner would respectfully show to the Court that he is much aggrieved by the judgment of the Criminal Court Division II of Shelby County, Tennessee, the Honorable Arthur C. Faquin, Judge, presiding, said judgment being rendered on the 26th day of May, 1969, and sustaining the State of Tennessee' Motion to Strike the petitioner's Motion for a New Trial.

Your petitioner would further relate that he timely petitioned the Criminal Court of Appeals for a Writ of Certiorari, and that the same was denied, hence this appeal to this Honorable Court.

YOUR PETITIONER STATES:

1. That the Criminal Court of Shelby County, Tennessee, the Honorable Judge Arthur C. Faquin presiding, erred in the hearing of May 26, 1969, in allowing the introduction of testimony by Mr. J. A. Blackwell, Clerk of the Criminal Court of Shelby County, Tennessee, and

the introduction of other evidence by Mr. Blackwell to show that the confession of James Earl Ray, petitioner, was freely and voluntarily given at a prior hearing.

2. That the Court erred in not sustaining the objections to testimony of Mr. Blackwell and the introduction of documents in this cause on May 26, 1969.

3. That the Court erred in not holding that the letters and amendments as presented by petitioner-defendant do not constitute a Motion for a New Trial. The letters and Motion for a New Trial are herein exhibited and attached hereto as Exhibits Nos. 1, 2 and 3.

4. That the Court erred in holding that the petitioner, James Earl Ray, waived his right to a Motion for a New Trial and an appeal.

5. That the Court erred in holding that a guilty plea precludes the petitioner from filing for a Motion for a New Trial.

6. That the Court erred in holding that the petitioner-defendant, James Earl Ray, knowingly, intelligently, and voluntarily expressly waived any right he might have to a Motion for a New Trial and/or Appeal.

7. That on June 16, 1969, the Court ruled erroneously in denying petitioner-defendant's prayer for leave or permission to file an appeal holding (a) that your defendant had waived his right of appeal, (b) that the sustaining of the State of Tennessee's Motion to Strike your defendant's Motion for a New Trial was an Interloc-

utory Order, and that, therefore, there was no appeal from the same.

8. That the Court erred in not granting your defendant's Motion for a New Trial pursuant to and in accordance with Code Section 17-117 of the Tennessee Code Annotated.

To all of the above citations of error the petitioner-defendant has heretofore reserved his exceptions.

Your petitioner would respectfully allege that he has no other remedy of speedy available appeal other than this Application for Writ of Certiorari.

Petitioner would state that notice was served on the Attorney General of the State of Tennessee, more than five (5) days before the filing of the Petition for Certiorari; and that the Petition would be presented to the State Supreme Court or one of the Judges thereof on October 6, 1969, at Jackson, Tennessee, and that a copy of the Petition was presented to the Attorney General of the state of Tennessee, as well as a copy of the Brief filed herein; a copy of the Notice and receipt thereof is attached hereto.

WHEREFORE PREMISES CONSIDERED, PETITIONER PRAYS:

1. That a Writ of Certiorari issue by this Honorable Court to the Criminal Court Division II of Shelby County, Tennessee, directing that Court and the Clerk thereof to certify and transmit to this Court the entire record and proceding in this cause including the opinion and judgment of the Trial Judges, consisting of the late Honorable Judge Preston W. Battle and the Honorable Judge Arthur C. Faquin, Judge of Division II of the Criminal Court of Shelby County, Tennessee.

2. That the judgment of the Criminal Court Division II in sustaining the State of Tennessee's Motion to Strike the Motion for a New Trial be reviewed and error complained of corrected; that your petitioner be granted a new trial and this cause remanded to the Courts of Shelby County, Tennessee, for a new trial and for further handling.

3. That petitioner have all such other, further, and different relief to which he is entitled, and he prays for general relief.

THIS IS THE FIRST APPLICATION FOR A WRIT OF CERTIORARI IN THIS CAUSE BEFORE THIS HONORABLE COURT.

Richard J. Ryan

STATE OF TENNESSEE

COUNTY OF SHELBY

RICHARD J. RYAN, who being first duly sworn, states that he is one of the attorneys for the petitioner, James Earl Ray; that he is familiar with the facts set forth in the foregoing Petition for Certiorari, and that the statements contained herein are true, except those made as upon information and belief, and these he believes to be true.

Richard J. Ryan

Subscribed and sworn to before me this 3rd day of October, 1969.

Bessie Lee Turner
NOTARY PUBLIC

My commission expires:
10-7-71

STATE OF TENNESSEE

VS

JAMES EARL RAY

IN THE SUPREME COURT OF
THE STAIE OF TENNESSEE

AT

JACKSON, TENNESSEE

N O T I C E

TO THE HONORABLE GEORGE F. McCANLESS, ATTORNEY GENERAL
and
HONORABLE THOMAS E. FOX, ASSISTANT ATTORNEY GENERAL:

You and each of you are hereby notified that James Earl Ray, by and through his Attorneys of Record, will on the 6th day of October, 1969, present to the Supreme Court of the State of Tennessee at Jackson, Tennessee, or to one of the Judges thereof, his Petition for Writ of Certiorari, seeking to have his case reviewed, and to have reviewed, also the judgment of May 26, 1969, of the Criminal Court, Division II, of Shelby County,Tennessee, the Honorable Arthur C. Faquin presiding, said judgment consisting of sustaining the State's Motion to Strike your petitioner's Motion for a New Trial. This action will seek to have the Motion for a New Trial sustained and the cause remanded for further handling by the Criminal Court of Shelby County, Tennessee.

This the 4th day of October, 1969.

Richard J Ryan

3-13-69

Dear Sir!

I wish to inform the honorable court that that James Hamton Atl. pery Daniels, is no longer representing me in any capacity. My reason for writing this letter is that I intend to file for a post conviction hearing in the very near future and don't want him serving any legal issues unless there is his or my behalf.

Sincerely
James Earl Ray

FILED 4-1-69 2:55 P.M.
J. A. BLACKWELL, CLERK
BY [signature] D. C.

Exhibit No. 1

3-16-69

Hon. Judge W. Preston Battle
Judge of the Criminal Court
Memphis, Tennessee.

I would respectfully request this court to treat this letter as a legal notice, of an intent to ask for a reversal of the 99 year sentence petitioner received in aforementioned court. I understand on one avenue of appeal, I have only 30 days in which to file a timely notice, to have previous sentence set aside. That is the appeal route to which I address the court.

I also would like to bring to the attention of the honorable court, That Mr. Perry Foreman, the attorney who was suppose to be representing me on this charge, stated in open court:

On that since he "Mr. Foreman" was receiving no funds to help prepare case for trial, and he did not think he should be required to use his own funds, he requested court to appoint counsel to help defray cost. The court appointed public defender to investigate case and assist Mr. Foreman.

That Mr. Foreman said in open court he did not want or expect to receive a cent for his efforts.

I think from Mr. Perry Foreman statement to the press that he had a contract from me and Mr. William B. Hussey "speculating" the case for $[illegible],000.00, and that he was now to receive $150.000. should by to rest the above. Then as Mr. Foreman told the court.

Exhibit #B

There is, I, James E. Ray in turn, have not personly received a cert from Mr. William B. Hill.

The only reason for bringing the aforementioned facts to the attention of the court is that I would respectfully move that the court appoint an attorney, or the public defender to assist me in the proceedings. I have no stocks, bonds, nor have I received any funds from any source to engage Counsel.

Petitioner uses the word "assist", as I hereby request the court, that I be personly present at the hearing, and to assist court appointed counsel so that there be no repetition of Mr. Percy Foreman actions.

Respectfully

James Earl Ray
Station A-West
777 S.B. Hwy 3
Nashville, Tenn. 37203.

FILED 4-1-69 2 56 P.M.
J. A. BLACKWELL, CLERK
BY [signature] D. C.

I, JAMES A. BLACKWELL, HEREBY CERTIFY THAT THE DATE WHICH APPEARS AT THE TOP OF THIS LETTER, ON THE FIRST PAGE, WHICH HAS BEEN OBLITERATED BY PUNCHING THE HOLE FOR INSERTION OF THIS LETTER IN THE JACKET, IS 3-26-69.

J. A. BLACKWELL, CRIMINAL COURT CLERK

WITNESS

WITNESS

DATE

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE

VS NO._____

JAMES EARL RAY

MOTIONFOR A NEW TRIAL

Comes now JAMES EARL RAY, the defendant in the above styled cause, through his attorneys ~~[illegible]~~ J. B. Stoner, Richard J. Ryan, and Robert W. Hill, Jr., and resptectfully moves the Court:

To set aside his plea of guilty, to set aside his conviction, and grant him a new trial on the following:

1. He was ~~[illegible]~~ improperly misled into entering a plea of guilty ~~[illegible]~~ evidenced by Exhibits 1, 2, 3, 4, 5, 6 and 7, attached.

2. That the defendant's plea of guilty and subsequent conviction were violative ~~[illegible]~~ of the 14th and 6th Amendments to the United States Constitution in that they deprived him of any effective legal counsel as evidenced by defendant's Exhibits 1, 2, 3, 4, 5, 6 and 7, which among other things clearly show that defendant's two previous attorneys of record, ~~[illegible]~~ improperly accepted pay from William Bradford Hule, ~~[illegible]~~ thus depriving defendant of any constitutional or legal defense.

3. That this Court's rules of secrecy were ~~[illegible]~~ improperly violated by defendant's two previous attorneys as evidenced by attached Exhibits 1, 2, 3, 4, 5, 6, and 7. Defendant specifically request that he be allowed an oral hearing and allowed to put on corroborative proof

The attorneys filing this Motion furnished the information in the Motion and the exhibits on the basis of information furnished by the defendant.

J. B. Stoner
J. B. STONER

Richard J. Ryan
RICHARD J. RYAN

Robert W. Hill
ROBERT W. HILL, JR.

EXHIBIT No. 3

PETITION NUMBER 1

PETITION FOR CERTIORARI

No. 55 Criminal Chancery-Law Docket of Shelby County

Petition Filed October 6 1969

Date of Judgment in C. of A. July 15, 1969

45 Days Time Expires From Date of Judgment August 29, 1969

15 Days Time Expires for Filing Reply Brief October 21, 1969

Order Ext. time to Oct. 13, 1969 to file

Defendant states that he has lost the benefit of the thirteenth juror through the death of the trial judge. "Trial judge is charged by law to act as the thirteenth juror, and if he is dissatisfied with verdict of jury, it is his duty to grant a new trial", London v. Step,405 SW2d 598, 34 Tenn. L. R.713. "Federal district court does not sit as thirteenth juror as do Tennessee state trial judges, Sifton v.Clements, 257 F. Supp. 63.

London v. Step

Sifton v. Clements

Respectfully submitted,

ATTORNEYS FOR THE DEFENDANT:

RICHARD J. RYAN

J. B. STONER

ROBERT W. HILL, JR.

44-1987-Sub-M-688

IN THE SUPREME COURT OF THE STATE OF TENNESSEE

STATE OF TENNESSEE

VS

JAMES EARL RAY

DEFENDANT'S BRIEF

RICHARD J. RYAN
523 FALLS BUILDING
MEMPHIS, TENNESSEE 38103
527-4715

J. B. STONER
P. O. Box 6263
Savannah, Georgia 31405

ROBERT W. HILL, JR.
418 PIONEER BLDG.
CHATTANOOGA, TENN. 37402

TO THE HONORABLE SUPREME COURT OF THE STATE OF TENNESSEE, SITTING AT JACKSON, TENNESSEE, OR TO ANY OF THE JUDGES THEREOF:

STATE OF TENNESSEE	FROM THE CRIMINAL COURT
VS	OF
JAMES EARL RAY	SHELBY COUNTY, TENNESSEE

STATEMENT OF CASE AND MEMORANDUM OF AUTHORITIES RELIED UPON IN SUPPORT OF PETITION FOR CERTIORARI

Statement of Facts:

On March 10, 1969, in Division III of the Criminal Court of Shelby County, TEnnessee, before the Honorable Judge Preston W. Battle the defendant, James Earl Ray, entered a Plea of Guilty to the charge of Murder in the First Degree of one Dr. Martin Luther King and was sentenced to the term of ninety-nine (99) years to be served in the State Penitentiary in Nashville, Tennessee. Three (3) days later on March 13, 1969, the defendant wrote to Judge Preston Battle of his intention to file in the near future a post conviction hearing. See Exhibit marked No. 1 attached to Petition.

On the 26th day of March, 1969, at the request of the defendant, James Earl Ray, his attorney, Richard J. Ryan, along with co-counsel, J. B. Stoner and Robert W. Hill, Jr., attempted to gain entrance in the State Penitentiary in order to confer with the defendant, James Earl Ray, but were refused;

that a document was prepared entitled "Motion for a New Trial" (See Exhibit No. 3). This document was given to the Warden who made a copy of the same and later presented it to James Earl Ray, the defendant; that he refused to sign the same without advice of counsel; that same day James Earl Ray wrote another letter to the Honorable Preston W. Battle, (See Exhibit No. 2), and this time stated that he wanted to go the thirty day appeal route.

On March 31, 1969, Judge Battle returned to Memphis from a short vacation period and was met at 9 A.M. of that day by one of the attorneys for James Earl Ray, the defendant herein. On that day Judge Battle exhibited the two letters he had received from James Earl Ray. Shortly thereafter in mid-afternoon of March 31, 1969, Judge Battle died of a heart attack. Shortly thereafter an Amended and Supplemental Motion was filed on behalf of James Earl Ray setting out the death of Judge Battle, and among other things, that the Plea of Guilty extended to Judge Battle was not one of a voluntary nature.

Subsequent to this the State of Tennessee filed a Motion to Strike the Motion for New Trial of the defendant-petitioner. On May 26, 1969, upon a hearing of this cause before the Honorable Arthur C. Faquin, Judge of Division II of the Criminal Court of Shelby County, Tennessee, the Honorable Judge Arthur C. Faquin found for the State of Tennessee and sustained their Motion to Strike.

Subsequent to this defendant-petitioner filed a Prayer for Appeal asking for permission and leave to file his appeal from this ruling, and this was denied by the Honorable Judge Arthur C. Faquin on June 16, 1969.

MEMORANDUM OF AUTHORITIES:

Defendant would allege that at the time the letters of record were written (attached to Petition as exhibits) there was in effect in the State of Tennessee a statute, namely:

T.C.A. Sec.27-201.

> Motion for Rehearing or New Trial. - A rehearing or motion for new trial can only be applied for within thirty (30) days from the decree, verdict or judgment sought to be affected, subject, however, to the rules of court prescribing the length of time in which the application is to be made, but such rules in no case shall allow less than ten (10) days for such application. The expiration of a term of court during said period shall not shorten the time allowed.

Life and Casualty Ins vs Bradley

In Life & Casualty Ins. Co. vs Bradley 178 Tenn. Page 531 it was found "Any motion to set aside a verdict is in legal effect a motion for a new trial".

Defendant would further allege that at the time of Judge Battle's demise there was a certain Statute in effect in the State of Tennessee, namely:

T.C.A. Sec.17-117

> New Trial after Death or Insanity. - Whenever a vacancy in the office of trial judge shall exist by reason of the death of the incumbent thereof, or permanent insanity, evidenced by adjudication, after verdict but prior to the hearing of the motion for new trial, a new trial shall be granted the losing party if motion therefor shall have been filed within the time provided by rule of the court and be undisposed of at the time of such death or adjudication.

Jackson vs Handel

Defendant would state that the demise of the trial judge was within the contemplation of the above statute and cites further, "Decisions long acquiesced in upon which important rights are based, should not be disturbed, in the absences of cogent reasons to the contrary, as is of the utmost importance that our organic and statute law be of certain meaning and fixed interpretation. Jackson vs Handel 327 SW2d 55, citing Pitts vs Nashville Baseball Club 127 Tenn. 292 and Monday vs Millsaps 197 Tenn. 295, and 46 C.J.286 cited in Life & Casualty Ins. Co. vs Bradley 178 Tenn. Page 530.

State vs McClain

Defendant further cites under said statute, "Only authority who may approve verdict and overrule motion for new trial by signing the minutes is the judge who heard the evidence and actually tried the case. State vs McClain, 210 S.W.2d 680, 186 Tenn. 401.

Louisville & N.R. Co. vs Ray

Also cites, "Motion for new trial must be acted on by the trial court, before the appellate court will consider it, because such action is indispensable for the purpose of enabling the appellate court to say whether the trial court acted correctly, under this statute, in granting a new trial", Louisville & N.R.Co. v Ray, 124 Tenn. 16, 134 S.W. 858, Ann Cas. 1912 D. 910.

Dennis vs State

O'Quinn vs Baptist Memorial Hosp.

Also cites, "The only authority to approve the verdict and overrule the first motion for a new trial by signing the minutes, was the Judge who heard the evidence and actually tried the case", Dennis v. State, 137 Tenn. 543 and O'Quinn v. Baptist Memorial Hospital, 183 Tenn. 558.

Howard vs. State

Also cites, "This situation has given the Court grave concern; and has led us to an assiduous re-examination of what we believe to be all of the case and statutory authority in Tennessee bearing upon the question of whether the above-mentioned minutes of the Court's actions are valid and efficacious - without authentication by the signature of the Trial Judge. If not, it seems to inescapably follow that (1) there is no valid and effective judgment on the verdict of the jury; and (2) there is no valid and efficacious ruling of the Court on defendant's motion for new trial", Howard v. State, 399 S.W.2d, 739.

Walker vs Graham

Defendant would allege that springing from the Motion for a new trial, if it were denied in the ordinary course, is the Bill of Exceptions, and defendant cites, "In the absence of a properly authenticated bill of exceptions the admission of evidence cannot be reviewed by the Supreme Court", Walker v. Graham 18 Tenn. 231, cited in Dennis v. State, 137 Tenn. 543.

Carpenter vs Wright

Also cites, "The right to a bill of exceptions is made dependent upon motion for a new trial in Circuit and Criminal Courts", Carpenter vs. Wright, 158 Tenn. 289.

Dennis vs State

Defendant also cites, "It seems to be well established as a general rule that, where a party has lost the benefit of his exceptions from causes beyond his control, a new trial is properly awarded. That rule has been recognized and applied more frequently perhaps in cases where the loss of

the exceptions has occurred through death or illness of the judge, whereby the perfection of a bill of exceptions has been prevented", Dennis vs State, 137 Tenn. 554.

That the Plea of Guilty of itself does not forfeit the Motion for a New Trial, and he cites, "By the Constitution of the State (Article I, Sec. 9), the accused, in all cases, has a right to a "speedy public trial by an impartial jury of the county or district in which the crime shall have been committed", and this right cannot be defeated by any deceit or device whatever. The courts would be slow to disregard the solemn admissions of guilt of the accused made in open court, by plea, or otherwise; but when it appears they were made under a total misapprehension of the prisoner's rights, through official misrepresentation, fear or fraud, it is the duty of the Court to allow the plea of guilty, and the submission, to be withdrawn, and to grant to the prisoner a fair trial, by an impartial jury", Swang vs. State, 42 Tenn. 212.

Swang vs State

Defendant would further cite Jake Knowles vs the State, 155 Tenn. Page 181, in which the Court states as follows:

Knowles vs State

> "The bill of exceptions shows that when the case was first called for trial on the 22nd of September, a continuance was had upon the agreement that unless settlement should be made before October 2nd following a plea of guilty would be entered. It appears that both the presiding judge and Attorney General understood it to be agreed also that a sentence of from five to twenty years would be accepted, but

upon the calling of the case on October 2nd, counsel for the defendant disclaimed having so understood the agreement and insisted that the determination of the punishment should be submitted to the jury. Thereupon the plea of guilty was entered and counsel for the State and the defendant addressed and the judge charged the jury. Some discussion was had before the jury of the disagreement as to the term of punishment, but the judge properly charged that they were to disregard this matter.

However, as before stated, no evidence was introduced. The jury after hearing the charge returned their verdict assessing the punishment.

Shannon's Code, Section 7174, is as follows:

'Plea of guilty.--Upon the plea of guilty, when the punishment is confinement in the penitentiary, a jury shall be impaneled to hear the evidence and fix the time of confinement, unless otherwise expressly provided by this Code.'

We have no reported case deciding the question thus presented, but the provision that upon a plea of guilty a jury shall be impaneled to hear the evidence and fix the time of confinement in felony cases seems clearly to indicate a purpose to vest in the jury the power to exercise a sound discretion impossible of intelligent exercise without a hearing of at least such of the evidence as might reasonably affect the judgment of the jury as to the proper degree and extent of the punishment. And especially is this true under the maximum (1923) sentence law applicable to this case.

> While loathe to reverse and remand in a case of such obvious and admitted guilt, we find it necessary to do so for the reasons indicated. It becomes unnecessary to consider other assignments of error."

Defendant denies that he waived a right that was available to him, and cites:

> "Waiver - Existence of Right - To constitute a waiver, the right or privilege alleged to have been waived must have been in existence at the time of the alleged waiver", 56 Am.Jr.13,Page 113. "Thus, one accepting dividends declared by a receiver in bankruptcy may without demanding interest on the amount due does not waive his right to interest, where no right to demand interest at the time of dividend payment existed", 56 Amjr.13,Page 114, citing State ex rel. McConnell v.Park Bank & T.Co. 151 Tenn.195.

In an unreported opinion the Court of Criminal Appeals of Tennessee in the cause of State of Tennessee, ex rel. Norman R. Owens vs. Luke F. Russell, No. 49 Hamilton County, Honorable Campbell Tarden, Judge, it was stated:

> "Without in any way criticizing the content and [illegible] preservation of [illegible] records of guilty pleas or transcripts, we think that execution of these forms by the petitioner and his counsel and the trial court's acceptance of the petitioner's plea of guilty upon that basis does not and cannot forever preclude the petitioner from raising any issue about the validity of his guilty plea. Surely it

cannot be said that such a procedure permanently forecloses the issue of voluntariness and prevents the accused from ever asserting that his guilty plea was induced by promises of lenient treatment or threats or misrepresentation or fraud, if such was the fact.

State ex rel Owens

"This is true for the plain and simple reason that a conviction based upon an involuntary plea of guilty is void, and, therefore, the question of the voluntariness of a plea of guilty is never foreclosed while any part of the resulting sentence remains unexecuted. The law is no longer open to debate or question that a guilty plea is involuntary and void if induced by promises of preferential treatment or threats or intimidation or total misapprehension of his rights, through official misrepresentation, fear or fraud. Henderson v. State ex rel. Lance, 419 S.W.2d 176; Machibroda v.United States, 368 U.S.487, 82 S.Ct.510, 7 L.Ed2d 473: Olive v.United States, 327 F2d 646 (6th Cir., 1964), cert. den., 377 U.S.971, 84 S.Ct. 1653,12LEd2d 740; Scott v. United States349 F2d 641 (6th Cir.1965)." Said opinion was concurred in by the Honorable Mark A. Walker and was written by W. Wayne Oliver, Judge of the Criminal Court of Appeals. Honorable Judge Galbreath did not participate in this cause.

Boyd v. State

"The voluntary or involuntary character of the confession is a question of law to be determined by the trial judge from the adduced facts", WHARTON ON CRIMINAL EVIDENCE Vol.2, Page 38, citing Boyd v. State, 21 Tenn. 39.

People v. Ramos

Requiring a waiver of right to appeal was held improper in People v. Ramos, 282 N.Y.State 2d 938 (2nd Dept. 1968).

10/9/69

AIRTEL

TO: DIRECTOR, FBI (44-38861)

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

SUBJECT: MURKIN

Enclosed for the Bureau are 2 copies each of a "Petition of JAMES EARL RAY for Writ of Certiorari" and of the defendant's brief filed with the Clerk of the Tennessee Supreme Court on 10/6/69 at Jackson, Tennessee.

Memphis will follow the subject's appeal and will keep the Bureau advised.

DATE FILE STRIPPED 6/8/87
INITIALS VTHO
RE: BU AIRTEL DTD 11/3/86

2 - Bureau (Encs. 4)
1 - Memphis
JCH:jap
(3)

jap

44-1987-Sub-N-689

SEE NEXT SECTION