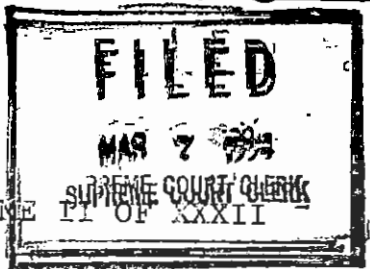


II. 03001-9403-CR-00090

TRANSCRIPT



NO. 5033-5036

VOLUME II OF XXXII

APPEALED FROM

SEVIER COUNTY CRIMINAL COURT

AT SEVIERVILLE, TENNESSEE

HON. REX HENRY OGLE, JUDGE

MISS HELEN K. LOVEDAY, CLERK

IN THE CASE OF

STATE OF TENNESSEE

vs.

3lv.
(Exhibits
in Blount Co.
for trial)

GARY WAYNE SUTTON AND JAMES ANDERSON DELLINGER

TO THE

CRIMINAL APPEALS COURT

KNOXVILLE, TENNESSEE

JUDGMENT LOWER COURT

SEE VOL. II, PP. 468 & 488

MR. G. SCOTT GREEN, ASST. ATTY. GEN. SEVIER COUNTY, TN
ATTORNEYS FOR PLAINTIFF

MR. EDWARD C. MILLER, PUBLIC DEFENDER, P. O. BOX 416
DANDRIDGE, TN 37725

MR. W. ZANE DANIEL, NATIONS BANK, 550 W. MAIN AVE., SUITE 950
KNOXVILLE, TN 37902

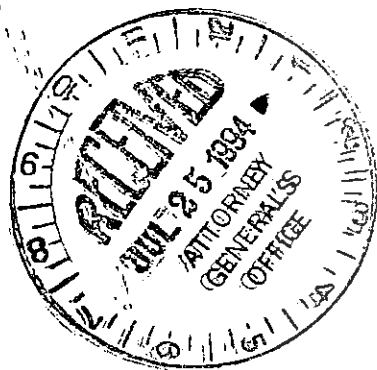
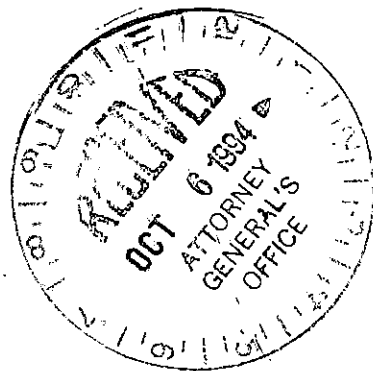
MR. DAVID W. WEBB, 140A COURT AVE., SEVIERVILLE, TN 37862
ATTORNEYS FOR DEFENDANT

FILED DAY OF 19

COURT CLERK

NO. DEP. CLERK

Handwritten signature or initials at the bottom right.



Courtesy of
Time of Death Podcast
by Beth Braden

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
 STATE OF TENNESSEE
 PLAINTIFF
 VS.
 GARY W. SUTTON
 DEFENDANT

CIRCUIT COURT
 FILED
 HOUR _____ M
 DATE OCT 15 1992
 NO. 5033, 5034
 CIRCUIT COURT CLERK
 SEVIER COUNTY, TENN.

SPECIFIC BRADY MOTION

COMES THE DEFENDANT, Gary W. Sutton, by and through counsel, and respectfully moves this Honorable Court for an Order, pursuant to Brady v. Maryland, and its progeny, to direct the government to provide the following exculpatory information:

1. Defendant, upon information and belief, avers that the government, during the course of its investigation, compiled a list, whether or not in writing, of suspects the government had reason to believe might have some involvement or knowledge of the crimes. Defendant therefore requests that the government provide, in writing, a list of possible or potential suspects, other than this Defendant, together with their names, addresses and telephone numbers.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY

JAMES W. GREENLEE, ATTORNEY

FOR DEFENDANT, GARY W. SUTTON

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by Hand Delivery.

THIS the 15 day of OCTOBER, 1992.

DAVID W. WEBB, ATTORNEY

oct92\b\sut-bra.mot

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE
PLAINTIFF
VS.
GARY WAYNE SUTTON
DEFENDANT

FILED
DATE: OCT 15 1992
NO. 5033, 5034
CIRCUIT COURT FOR SEVIER COUNTY

RESPONSE TO STATE'S

MOTION IN LIMINE

COMES the Defendant, Gary W. Sutton, by and through counsel and for response to the Motion in Limine filed by the State seeking to disallow any evidence tending to establish an alibi on behalf of this Defendant, the Defendant responds as follows:

1. At the time the State filed the Motion in Limine the State had failed to fully comply with discovery.
2. Until the State fully complied with discovery, the Defendant was not in a position to decide whether or not to offer any defense, including the defense of alibi. In support, Defendant avers that the State's case is extremely weak and circumstantial at best. Defendant avers that the State has no eye witnesses, no confession nor any physical evidence which would link this Defendant to any crime.
3. Defendant avers that the State has suffered no prejudice whatsoever at this time.

4. Rule 12.1(a) states that the Defendant shall serve within ten (10) days, or at such different time as the Court may direct, upon the District Attorney General a written notice of his intention to offer a defense of alibi. Defendant avers that the Court has directed all Parties to file any and all Motions on or before October 15, 1992. This is pursuant to the Court's Order filed October 6, 1992. The Defendant avers that by the filing of this response the Defendant is in full compliance with the Court's previous Order.

Respectfully submitted this the 15 day of OCTOBER,
1992.

GARY W. SUTTON, DEFENDANT

BY: David W. Webb

DAVID W. WEBB, ATTORNEY

James W. Greenlee

JAMES W. GREENLEE, ATTORNEY

FOR DEFENDANT, GARY W. SUTTON

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this
date sent a true and exact copy of the foregoing Notice to
the State of Tennessee, District Attorney General, Third
Floor, County Courthouse, Sevierville, TN. 37862 and to Mr.
Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN.
37725-0416 by Hand Delivery.

THIS the 15 day of OCTOBER, 1992.

David W. Webb

DAVID W. WEBB, ATTORNEY

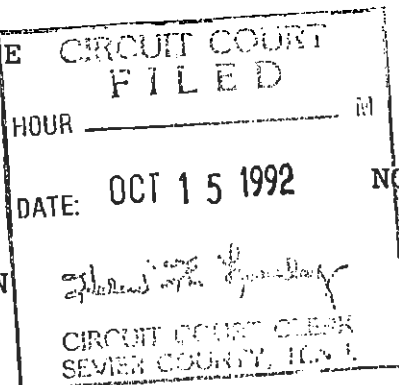
oct92\b\sut-al.def

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE
PLAINTIFF

VS.

GARY WAYNE SUTTON
DEFENDANT



MOTION TO PRESERVE EVIDENCE

COMES the Defendant, Gary Wayne Sutton, through counsel, and moves this Honorable Court to Order the State to preserve all items of evidence in the control of the State, that has been sent to the crime lab for the purpose of possible independent examination by the defense.

In support of this relief the defense would show to the Court that the State has seized several items from the automobile the victim was found in, to wit: pieces of metal and a shell casing. The pieces of metal were characterized in their "request for examination" to the crime lab for State of Tennessee, as bullets. However, in one instance the "bullet" came back to be a cross and chain. In the other instance it came back to be unidentifiable, non lead metal objects, made of zinc, a material not commonly associated with bullets. This inaccuracy indicates the State is trying to slant how these items were viewed. It would be highly prejudicial to the defense if physical evidence were not available for independent examination.

In order to fairly represent to the jury these items of evidence it may be necessary to have these items independently examined.

PREMISES CONSIDERED, the Defendant ask that the Court Order all items of evidence seized and preserved for the same period of time the State had the items before the lab results were returned, for the purposes of possible independent examination, the details of which would be worked out between the defense and the State Officials.

RESPECTFULLY SUBMITTED this the 15 day of OCTOBER, 1992

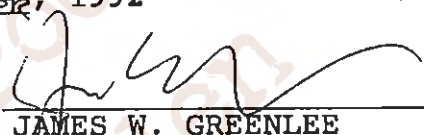

DAVID W. WEBB
Co-Counsel for Defendant


JAMES W. GREENLEE
Co-Counsel for Defendant

ATTORNEY'S CERTIFICATE

I, James W. Greenlee, attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the Attorney General's Office, 3rd Floor, Courthouse, Sevierville, Tennessee by HAND-DELIVERY

THIS the 15 day of OCTOBER, 1992


JAMES W. GREENLEE

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

FILED

DATE: OCT 15 1992 *

NO. 5033, 5034

CIRCUIT COURT CLERK

MOTION TO RESTRICT STATE TO SPECIFIC

AGGRAVATING FACTORS

COMES the Defendant, Gary W. Sutton, by and through counsel, and moves this Honorable Court as follows:

1. On or about May 14, 1992, the State filed a Notice of Intent to Seek Death Penalty in which they listed one (1) specific aggravating factor that would be used at the sentencing stage should the Defendant be convicted of the charge of First Degree Murder contained in the Indictment.

2. That since that time the State has not given the Defendant Notice of any other enhancement or aggravating factors and the Defendant has no knowledge of any other potential enhancement or aggravating factors.

3. That as a result of this it would violate the Defendant's constitutional rights, both State and Federal, to permit the State to argue any other aggravating or enhancement factors at the sentencing hearing should the Defendant be convicted.

WHEREFORE, the Defendant prays that this Court enter an Order restricting the State to only that specific aggravating factor as set forth in their Notice.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~US Mail~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.



DAVID W. WEBB, ATTORNEY

jul92\b\s-st-enh.fac

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT FILED	
HOUR _____	M _____
DATE: OCT 15 1992 NO. 5033, 5034	
<i>Shawn H. Greenlee</i> CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

MOTION

COMES the Defendant, by and through counsel, and moves this Honorable Court to Order the State to provide the names, addresses, and phone numbers, of all rebuttal witnesses and all witnesses to be used for impeachment purposes. Defendant submits to this Court that without this information he cannot adequately prepare a defense. Defendant understands that this is in the Court's discretion and makes this Motion in the interest of justice and fairness in that this is a complex case which involves the death penalty and as a result the Defendant submits that the interest of justice requires it.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

David W. Webb
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~US MAIL~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
DAVID W. WEBB, ATTORNEY

jul92\b\s-impea.wit

152

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

CIRCUIT COURT
FILED

PLAINTIFF

HOUR

*

M

VS.

DATE: OCT 15 1992

NO. 5033, 5034

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT CLERK

MOTION TO REQUIRE THE STATE TO REVEAL

ANY PRIOR CONVICTIONS OF PROSECUTION WITNESSES

COMES the Defendant, through counsel, and moves this Honorable Court to issue an Order requiring the State to reveal any prior convictions suffered by the prosecution witnesses in that the credibility of said witnesses will be an important issue in the principle case, and the evidence of any prior convictions as to prosecution witnesses will be relevant to such witnesses' credibility, and the trial jury is entitled to know of it.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

DAVID W. WEBB, ATTORNEY

jul92\b\s-conv-w.st

153

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT	
FILED	
HOUR _____	M _____
DATE: OCT 15 1992	
NO. 5033, 5034	
<i>James W. Greenlee</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

MOTION TO REQUIRE THE STATE TO REVEAL

ANY AGREEMENTS BETWEEN THE STATE AND PROSECUTION WITNESSES

Comes the Defendant, through counsel, and moves this Honorable Court to issue an Order requiring the State to reveal any agreement entered into between the District Attorney's Office and any prosecution witness that could conceivably influence said witness's testimony on the following grounds:

1. The credibility of said witness will be an important issue in the principal case, and the evidence of any understanding or agreement as to future prosecution would be relevant to such witness's credibility, and the trial Jury is entitled to know of it.
2. A refusal to reveal any set agreement constitutes a violation of the Fourteenth Amendment due process clause of the United States Constitution, and Article 1, §8 of the Tennessee Constitution.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: *David W. Webb*

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
DAVID W. WEBB, ATTORNEY

jul92\b\s-agr-st.wit

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE FILED

PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

HOUR _____ M
DATE: OCT 15 1992
NO. 5033, 5034

CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

MOTION TO CHARGE PENALTIES

Comes the Defendant, Gary W. Sutton, through counsel and moves this Honorable Court to charge the Jury as to all possible penalties for the offenses charged and for all lesser included offenses.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: David W. Webb
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
DAVID W. WEBB, ATTORNEY

jul92\b\s-char-p.off

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

CIRCUIT COURT
FILED*
PLAINTIFF _____ HOUR _____ M
VS. DATE: OCT 15 1992* NO. 5033, 5034
GARY W. SUTTON*
DEFENDANT*
CIRCUIT COURT

MOTION TO STRIKE

Comes the Defendant, Gary W. Sutton, through counsel, and moves the Court for an Order striking the work "ALIAS" from the Indictment, pursuant to Rule 12(b) of the Tennessee Rules of Criminal Procedure. Defendant requests a hearing on this Motion.

Respectfully submitted this the 15 day of OCTOBER, 1992. GARY W. SUTTON, DEFENDANT

BY: David W. Webb

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
DAVID W. WEBB, ATTORNEY

jul92\b\s-strike.ali

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

FILED

PLAINTIFF

* M

VS.

DATE: OCT 15 1992

*

NO. 5033, 5034

GARY W. SUTTON

*

DEFENDANT

*

MOTION

COMES the Defendant, Gary W. Sutton, through counsel, and moves this Honorable court to issue an Order prohibiting the Defendant from being brought in any court appearance (a) while wearing jail clothing and (b) while restrained with handcuffs or leg restraints. In support of this Motion, the Defendant cites the Eighth and Fourteenth Amendments of the United States Constitution. The Defendant requests a hearing on this Motion.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

DAVID W. WEBB, ATTORNEY

jul92\b\s-restra.no

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
 STATE OF TENNESSEE
 PLAINTIFF
 VS.
 GARY W. SUTTON
 DEFENDANT

FILED *
 HOUR _____ M
 DATE: OCT 15 1992
 NO. 5033, 5034
 CIRCUIT COURT CLERK
 SEVIER COUNTY, TENN.

MOTION TO ALLOW JURY QUESTIONNAIRE

COMES the Defendant, Gary W. Sutton, through counsel, and moves this Honorable Court to issue an Order for all prospective jurors to complete a questionnaire a copy of which is attached to this Motion. As grounds for this Motion, the Defendant would show the Court that completion of such a questionnaire before voir dire would result in a great savings of time and tax dollars. The Defendant also submits that the Defendant's right to access to such information is guaranteed by the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article 1, §8,9, and 16 of the Tennessee Constitution.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: David W. Webb
 DAVID W. WEBB, ATTORNEY
 JAMES W. GREENLEE, ATTORNEY
 FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
 DAVID W. WEBB, ATTORNEY

jul92\b\s-quest.jur

158

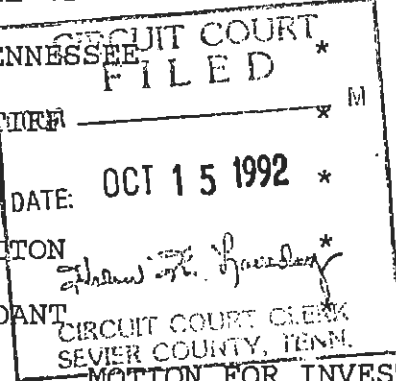
IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT



NO. 5033, 5034

MOTION FOR INVESTIGATORS' NOTES

COMES the Defendant, Gary W. Sutton, by and through counsel, and moves this Honorable Court to Order the discovery of the rough notes and the handwritten notes of the investigators in the above captioned case. The Defendant submits that this is proper discovery pursuant to Rule 16 of the T.R.C.P. and the interests of justice require it.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

David W. Webb
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~U.S. MAIL~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
DAVID W. WEBB, ATTORNEY

jul92\b\s-invest.not

159

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE * W

PLAINTIFF
DATE: OCT 15 1992*

VS.

GARY W. SUTTON

DEFENDANT

NO. 5033, 5034

Thomas H. Hensley
*
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

MOTION FOR SPECIAL VOIR DIRE RE: DEATH PENALTY

COMES the Defendant, Gary W. Sutton, through counsel, and moves this Honorable Court for an Order permitting the Defendant to discover during the voir dire whether or not individual potential jurors would automatically vote for the death penalty upon a finding of guilt. Defendant also requests that this examination exclude all potential jurors who would automatically vote for death upon a showing of guilt.

THIS Motion is made pursuant to the case of Witherspoon v. Illinois, 391 U.S. 510, (1968), which held that the jurors can be challenged for cause if it is clear that they would automatically vote against the death penalty. Defendant contends that the same rationale should apply in the reverse and that any person who would automatically vote for the death penalty should be excluded as well.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: *[Signature]*
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

BY: *[Signature]*
DAVID W. WEBB, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~U.S. MAIL~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

[Signature]
DAVID W. WEBB, ATTORNEY

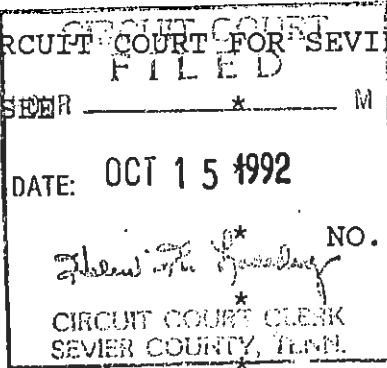
IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT



NO. 5033, 5034

MOTION FOR A STRUCK SELECTION SYSTEM

COMES the Defendant, Gary W. Sutton, through counsel, and moves this Honorable Court to issue an Order providing that no peremptory challenges be made until most of all of the prospective jurors have been questioned and qualified for service. The Defendant requests a hearing on this Motion.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~US MAIL~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

DAVID W. WEBB, ATTORNEY

jul92\b\s-select.str

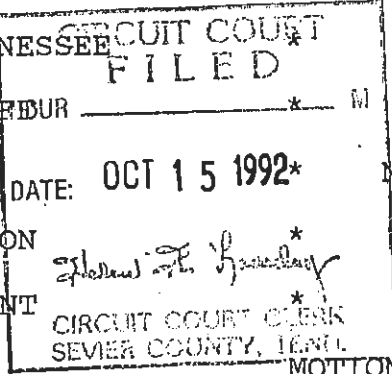
IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT



NO. 5033, 5034

MOTION

COMES the Defendant, by and through counsel, and moves this Honorable Court to issue an Order requiring Mr. Al Schmutzer, Jr., District Attorney General, Fourth Judicial Circuit, State of Tennessee to set out what criteria, if any, that his office uses in determining whether to seek the death penalty in a particular case.

THE Defendant requests a hearing on this Motion.

MEMORANDUM OF LAW

Pursuant to the Fourteenth Amendment of the United States Constitution and Article 1, §8 of the Tennessee Constitution, an accused defendant in a death penalty case has a right that the death penalty will not be imposed against him in a discriminatory or arbitrary manner.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

DAVID W. WEBB, ATTORNEY

jul92b\s-criter.st

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

FILED *

VS.

DATE: OCT 15 1992 *

NO. 5033, 5034

GARY W. SUTTON

DEFENDANT

MOTION FOR NOTICE BY THE STATE OF ITS INTENTION TO

USE EVIDENCE ARGUABLY SUBJECT TO SUPPRESSION

COMES NOW the Defendant, Gary W. Sutton, by and through counsel, pursuant to Rule 12(d)(2), T.R.Crim.P., and moves the Court for entry of an Order directing the State to make inquiry and to serve and file specific written notice of the following:

Any and all evidence or information in the possession, custody, or control of the State, or the existence of which is known, or by the exercise of due diligence could become known to the State, which evidence or information the State presently or at any time contemplates or considers using at trial in this case, in order to afford the Defendant an opportunity to move to suppress.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY

JAMES W. GREENLEE, ATTORNEY

FOR DEFENDANT, GARY W. SUTTON

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by Hand Delivery.

THIS the 15 day of OCTOBER, 1992.

DAVID W. WEBB, ATTORNEY
FOR DEFENDANT

163

oct92\b\sut-ev.spp

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT FILED	
HOUR	DATE: OCT 15 1992
NO.	5033, 5034
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

MOTION TO DISMISS

THE INDICTMENT DUE TO THE ILLEGALITY AND
UNCONSTITUTIONALITY OF T.C.A. §39-2-203 and §39-2-205

AND THE IMPOSITION OF THE SENTENCE OF DEATH

COMES the Defendant, Gary W. Sutton, through counsel, and moves this Honorable Court to dismiss the Indictment in this cause on the ground that T.C.A. §39-2-203 and T.C.A. §39-2-205, which allow for the imposition of the sentence of death upon conviction of murder in the First Degree, violate the Fifth, Sixth, Eighth and Fourteenth Amendment to the United States Constitution, as well as Article I, §§ 8,9,10,14 and 16 of the Tennessee Constitution and the Rules of Law as espoused and mandated by the United states Supreme Court for the following reasons:

1. T.C.A. §39-2-203(f) and (g) provide insufficient guidance to the jury concerning who has the burden of proving whether mitigation outweighs aggravation and what standard of proof the jury should use in making that determination in violation of the 8th and 14th Amendments of the United States Constitution and Article I. §§16 and 8 of the Tennessee Constitution.....3

2. T.C.A. §39-2-203 does not sufficiently narrow the population of defendants, convicted of first degree murder, who are eligible for a sentence of death in violation of the 8th and 14th Amendments of the United States Constitution and Article I, §§16 and 8 of the Tennessee Constitution....6

3. T.C.A. §39-2-203 does not sufficiently limit the exercise of the jury's discretion because, once the jury finds aggravation, it can impose the sentence of death no matter what mitigation is shown, in violation of the 8th and 14th Amendments of the United States Constitution and Article I, §§16 and 8 of the Tennessee Constitution.....7

4. T.C.A. §39-2-203 insufficiently limits the exercise of the jury's discretion by mandatorily requiring the jury to impose a sentence of death if it finds the aggravating circumstances to outweigh the mitigating circumstances in violation of the 8th and 14th Amendments of the United States Constitution and Article I, §§ 16 and 8 of

the Tennessee Constitution.....8

5. T.C.A. §39-2-203 allows the jury to accord too little weight to non-statutory mitigating factors and limits the jury's options to impose the sentence of life in violation of the 8th and 14th Amendments of the United States Constitution and Article I, §§16 and 8 of the Tennessee Constitution.....10

6. T.C.A. §39-2-103 does not require the jury to make the ultimate determination that death is appropriate in violation of the 8th and 14th Amendments of the United States Constitution.....11

7. T.C.A. §39-2-203 does not inform the jury of its ability to impose a life sentence out of mercy in violation of the 8th and 14th Amendments of the United States Constitution and Article I, §§16 and 8 of the Tennessee Constitution.....12

8. T.C.A. §39-2-203 provides no requirement that the jury make findings of facts as to the presence or absence of mitigating circumstances, thereby preventing effective review on appeal under T.C.A. §39-2-205(c) in violation of the defendant's 8th and 14th Amendment rights of the United States Constitution and Article I, §§ 16 and 8 of the Tennessee Constitution.....12

9. T.C.A. §39-2-203(h) prohibits the jury from being informed of the consequences of its failure to reach a unanimous verdict in the penalty phase in violation of the 5th, 6th, 8th, and 14th Amendments of the United States Constitution and Article I, §§10,9,16 and 8 of the Tennessee Constitution.....144

10. The imposition of the sentence of death pursuant to T.C.A. §39-2-203 is cruel and unusual and thus in violation of the 8th and 14th Amendments of the United States Constitution and Article I, §16 of the Tennessee Constitution.....15

11. The imposition of the sentence of death pursuant to T.C.A. §39-2-203 by electrocution is cruel and unusual in violation of the 8th and 14th Amendments of the United States Constitution and Article I, §16 of the Tennessee Constitution.....16

12. The imposition of the sentence of death pursuant to T.C.A. §39-2-203 violates the 8th and 14th Amendment of the United States Constitution and Article I, §§16 and 8 of the Tennessee Constitution because it has been imposed discriminatorily in this State on the basis of race, sex and geographic region in the state, economic and political status of the defendant.....17

13. The proportionality and arbitrariness review conducted by the Tennessee Supreme Court pursuant to T.C.A. §39-2-203 is inadequate and deficient in violation of the 8th and 14th Amendments of the United States Constitution and Article I, §§16 and 8 of the Tennessee Constitution...18

14. T.C.A. §39-2-203(c) permits the introduction of relatively unreliable evidence in the State's proof of aggravation or rebuttal of mitigation and thus violates the 5th, 8th and 14th Amendments of the United States Constitution and Article I, §§9,16 and 8 of the Tennessee Constitution.....26

15. T.C.A. §39-2-203(d) allows the State to make final closing arguments to the jury in the penalty phase in violation of the defendant's right to due process of law and effective assistance of counsel as guaranteed by the 5th, 6th and 14th Amendments to the United States Constitution and Article I, §§8 and 9 of the Tennessee Constitution...28
Respectfully submitted this the 15 day of OCTOBER, 1992. GARY W. SUTTON, DEFENDANT

BY: [Signature]
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

BY: [Signature]
DAVID W. WEBB, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

[Signature]
DAVID W. WEBB, ATTORNEY

jul92\b\s-dis-i.111

166

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE
PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

FILED
DATE: OCT 15 1992
NO. 5033, 5034
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

MOTION TO SUPPRESS STATEMENTS

COMES THE DEFENDANT, Gary Wayne Sutton, by and through counsel, and says:

1. That on February 25, 1992 and February 28, 1992 this Defendant voluntarily met with Detective Jim Widner and Detective Dale Gourley of the Blount County Sheriff's Department at the Sevier County Sheriff's Department in Sevierville, Sevier County, Tennessee.
2. On each of the above mentioned occasions this Defendant gave a statement. The Defendant was not under arrest but knew he was a suspect.
3. On February 28, 1992 at approximately 9:30 a.m. the Defendant's attorney, David W. Webb, received a telephone call which advised the Defendant's attorney that the Defendant was going to return to the Sevier County Sheriff's Department to talk with the investigators. Defendant's attorney, David W. Webb, immediately called Detective Jeff McCarter, of the Sevier County Sheriff's Department and advised this Detective that David W. Webb represented the Defendant, Gary Wayne Sutton, and that no one should take any statement from this Defendant without the presence of counsel. Detective McCarter acknowledged this demand and advised he would pass the information to the other investigators.
4. On February 28, 1992 at approximately 11:45 a.m. the Defendant, while giving a statement asked to call his

attorney, David W. Webb. The officers stopped the interview and allowed the Defendant to call his attorney.

5. At approximately 12:00 p.m. (noon) the Defendant's attorney, David W. Webb, along with co-counsel, James W. Greenlee, appeared at the Sevier County Sheriff's Department for the purpose of consulting with their client, this Defendant.

6. After consulting with their client, counsel for this Defendant advised the investigators that this Defendant would not be giving any further statements and admonished the investigators not to attempt to interrogate this Defendant any further. The investigators acknowledged that they would not interrogate this Defendant any further. The investigators did say they were going to photograph and fingerprint this Defendant and counsel did not object.

7. Several hours later this Defendant was released from custody.

8. This Defendant was arrested on March 5, 1992 and has been incarcerated since that date.

9. On March 5, 1992 at approximately 1:40 p.m. this Defendant was read his Constitutional rights and signed an Admonition and Waiver. At approximately 3:30 p.m. on the same date, this Defendant, while in the process of being booked, was confronted by Detective Jeff McCarter and was told "to do some soul searching about this incident". In response, this Defendant gave a statement. Before giving this statement the Defendant was not advised of his Constitutional rights. Furthermore, this Detective knew that this Defendant was represented by counsel.

10. On March 9, 1992 an alleged statement was taken by David Davenport of the Tennessee Bureau of Investigation. Defendant denies that he initiated the appearance of David Davenport or any other officer by making a request to talk to any officers. Defendant avers that David Davenport did

come to the Sevier County Sheriff's Department and try to pressure this Defendant into giving a statement. This Defendant told David Davenport that he would not give any further statement without his attorney present. Defendant avers that David Davenport then became upset and began to curse, threaten and vilify this Defendant. Defendant avers David Davenport then left.

Defendant avers that this agent knew that this Defendant was represented by counsel as reflected on the agent's statement and the Admonition and Waiver. There was no tape recording of the alleged statement so as to accurately reflect what occurred. All that exists is this agent's handwritten statement which was not signed by this Defendant and the Admonition and Waiver which likewise was not signed by this Defendant.

PREMISES CONSIDERED, Defendant avers that any statements he may have given authorities after his attorney admonished the authorities not to take any further statements from this Defendant should be suppressed for the following reasons:

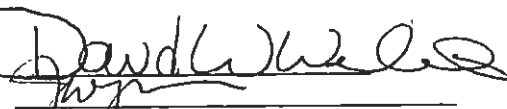
1. Considering the totality of the circumstances the statements were not freely nor voluntarily given;
2. The statement given Detective McCarter was given by virtue of mental coercion and without timely advisement to this Defendant of his Constitutional rights;
3. The statements of February 28, 1992, March 5, 1992 and March 9, 1992 were obtained in violation of the Defendant's privilege against self-incrimination and the Defendant's right to counsel, both guaranteed by the Tennessee and the United States Constitutions.
4. The interrogating officers knew that this Defendant was represented by counsel but never-the-less initiated a custodial interrogation of this Defendant without notifying

Defendant's counsel thus violating this Defendant's Constitutional rights.

RESPECTFULLY SUBMITTED:

THIS THE 15 DAY OF OCTOBER, 1992.

GARY WAYNE SUTTON, DEFENDANT

BY: 

DAVID W. WEBB, ATTORNEY FOR DEFENDANT
JAMES W. GREENLEE, ATTORNEY FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~US MAIL~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.


DAVID W. WEBB, ATTORNEY

oct92\b\sut-sup.mot

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT	
FILED*	
HOUR _____	IN _____
DATE: OCT 15 1992	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

NO. 5033, 5034

MOTION FOR INDIVIDUAL AND SEQUESTERED VOIR DIRE EXAMINATION

COMES the Defendant, Gary W. Sutton, by and through counsel, and respectfully moves this Honorable Court for an Order directing that the method of jury selection and the trial of this cause be individual and sequestered, the method in which each perspective juror is examined by counsel outside the presence of other chosen and perspective jurors. In support of this Motion the Defendant would respectfully show:

1. This case has received considerable attention from the news media and therefore there is reason to believe the perspective jurors have been influenced by the dissemination of potentially prejudicial material.

2. The usual method of jury selection by Voir Dire of the whole panel of perspective jurors will result in the exposure of the entire panel to prejudicial material recited by the particular juror being examined. perspective jury panels seated in the courtroom awaiting call for service would also be needlessly contaminated by our usual procedures.

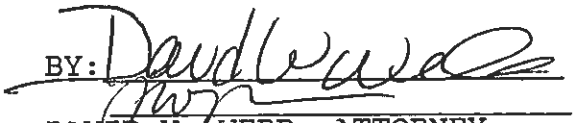
3. These usual procedures are inappropriate in a case such as the one at bar where a significant possibility exists that a juror will be ineligible to serve because of exposure to potentially prejudicial material. The procedure of individual and sequestered Voir Dire is thus far preferable to the usual panel Voir Dire.

WHEREFORE, Defendant respectfully moves this Court for the entry of an Order designating that the panel of

perspective jurors to be sequestered and that the parties be permitted to individually examine perspective jurors.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: 

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~U.S. Mail~~ XXXXXXX HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.


DAVID W. WEBB, ATTORNEY

jul92\b\s-seques.jur

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
CIRCUIT COURT
STATE OF TENNESSEE FILED

PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

HOUR _____ M
DATE: OCT 15 1992
NO. 5033, 5034

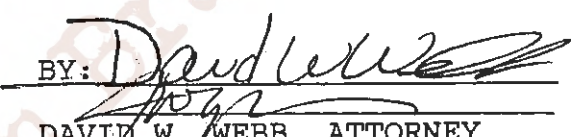
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

MOTION TO EXCLUDE AGGRAVATING FACTOR

COMES THE DEFENDANT, Gary W. Sutton, by and through counsel, and moves this Honorable court to exclude the aggravating factor " The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another" as an aggravating factor in the above styled cause in that that factor is unconstitutionally vague.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: 

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~UXXXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.


DAVID W. WEBB, ATTORNEY

173
jul92\b\factor.vag

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT FILED	
HOUR _____	M _____
DATE: OCT 15, 1992	
NO. 5033, 5034	
<i>Sharon F. Greenlee</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

MOTION FOR BILL OF PARTICULARS

REGARDING STATUTORY AGGRAVATING CIRCUMSTANCES

COMES the Defendant, Gary W. Sutton, through his counsel, and respectfully moves this Honorable Court to order the State to furnish a BILL OF PARTICULARS, pursuant to Rule 7(c), Tennessee Rules of Criminal Procedure, setting forth the following information:

1. The facts that will be proven to substantiate the statutory aggravating circumstance that the murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the Defendant or another as set forth in T.C.A. §39-13-204(i)(6).

2. The date, time and location that the above facts occurred and the involvement of the Defendant, Gary W. Sutton, in facilitating the facts.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: *David W. Webb*

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
DAVID W. WEBB, ATTORNEY

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE CIRCUIT COURT

FILED

PLAINTIFF

HOUR

M

VS.

DATE: OCT 15 1992

NO. 5033, 5034

GARY W. SUTTON

DEFENDANT

MOTION TO PROHIBIT DEATH QUALIFICATIONS OF JURORS

COMES the Defendant, Gary W. Sutton, by and through counsel, and moves this Honorable Court to not allow the death qualification of the guilt jury in the above captioned cause. Defendant contends that this qualification process distorts the composition of the jury panel and automatically creates a situation in which jurors that sit in the case are more prosecution prone, not only as to sentence, but also as to guilt. Such qualification violates the Defendant's Sixth Amendment rights to a fair trial and as such cannot be tolerated in this case.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~. HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

DAVID W. WEBB, ATTORNEY

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

CIRCUIT COURT
FILED
HOUR _____ M
DATE: OCT 15 1992
NO. 5033, 5034
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

MOTION TO PERMIT THE DEFENDANT TO ARGUE LAST

COMES the Defendant, Gary Sutton, by and through counsel, and moves this Honorable court for an Order permitting the Defendant's attorneys to argue to the jury last. Due to the heightened standard of due process and the heightened standard of reliability that attaches in a death penalty hearing, and further due to the fact that the Defendant's life is at stake, the Defendant respectfully submits that he should be allowed to argue to the jury last. The Defendant understands that the Tennessee Supreme Court has disagreed with this argument. State v Melson, S.W.2d 342 (Tenn.1982). The Defendant submits that he should be entitled to this right in any event since it is his life that hinges on the jury's decision. Studies have shown that there is an inherent advantage in having the final jury argument. Common sense would show that the Party with the last word would tend to have an advantage since they could rebut or refute anything that was said at previous arguments.

Therefore to permit the State to have the final word in a case in which the Defendant's life hangs in the balance, violates all notions of fundamental fairness.

Respectfully submitted this the 15 day of OCTOBER,
1992.

GARY W. SUTTON, DEFENDANT

BY: David W. Webb
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~. HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.



DAVID W. WEBB, ATTORNEY

jul92\b\s-argue.lst

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT FILED	
HOUR _____	IN _____
* DATE: OCT 15 1992 *	
J. David Webb CIRCUIT COURT CLERK SEVIER COUNTY, TENNESSEE	

NO. 5033, 5034

COMES the Defendant, by and through counsel, and moves this Honorable Court to limit its instruction to the jury at the sentencing phase to charging only the one specific aggravating factor the State is relying on in this case and in support would show as follow:

1. That the patterned instructions for the State of Tennessee for the fixing of punishment of death or life imprisonment lists each statutory aggravating factor.

2. That the State of Tennessee in this case has only given notice of the presence of one statutory aggravating factor.

3. That it appears the State of Tennessee will be limited to the proving of one statutory aggravating factor and therefore there is no need to charge all twelve statutory aggravating factors and this could only serve to prejudice the Defendant.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: 

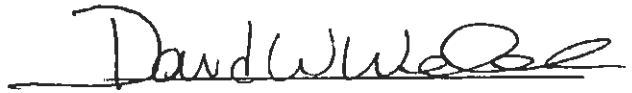
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third

Floor, County Courthouse, Sevierville, TN. 37862 and to Mr.
Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN.
37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.



DAVID W. WEBB, ATTORNEY

ju192\b\s-ag-fac.ch

Courtesy of
Time of Death Podcast
by Beth Braden

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

DATE: OCT 15 1992
NO. 5033, 5034

MOTION TO COMPEL DISCLOSURE OF THE EXISTENCE AND SUBSTANCE
OF PROMISES OF IMMUNITY, LENIENCY OR PREFERRED TREATMENT

COMES the Defendant, Gary W. Sutton, by and through counsel, and respectfully moves this Honorable Court to Order the State to disclose to him the existence and substance of any promises of immunity, leniency or preferred treatment. Specifically, the Defendant requests that the State make the following information available:

1. The existence, substance and the manner of execution or fulfillment of any promise, statement, agreement, understanding, or arrangement, either verbal, written or implied between the State or its agents and any prosecution witness or cooperating individual, or such person's attorneys or representatives, for the purpose of obtaining said person's testimony or cooperation, or the disclosure of information by the person to the State, wherein the State or any of its agents has agreed to do or has suggested it would do any of the following:

a) Not prosecute said person for any crime or crimes or recommend that the person not be prosecuted for any past or future criminal conduct;

b) Not prosecute a third party for any crime or crimes where the reason for not prosecuting the third party is the consideration to the person;

c) Provide a formal grant of statutory immunity or to provide an informal assurance that the person will not be prosecuted in connection with any testimony, cooperation, or information given by him or her;

d) Recommend leniency or a particular sentence for any crime or crimes for which he or she stands convicted or believes might be convicted;

e) Comply with any prior agreements although said witness may have previously violated a part of his agreement;

f) Provide favorable treatment or consideration, including, but not limited to, money, a job, a new location, a new start, etc..., to the person himself or to friends or relatives of the person in return for his or her testimony, cooperation, and provision of information;

g) Make any recommendation of benefit to the person, to any state or federal agency including, but not limited to, any state or federal agency including, but not limited to, any state or federal law enforcement agency; and,

h) Cooperate with any state law enforcement agency in that agency's agreement not to prosecute said person for any crime or crimes prohibited by state law; and,

i) Make any other recommendation of benefit, or give any other consideration to the person or friends or relatives of said person.

2. Any cancelled check, receipt, voucher, or any other document produced as a result of any promise, statement, agreement, understanding or arrangement by which any of the above was provided to the person or by which record was kept of such by the State.

3. The substance and manner of execution of any threat of prosecution or intimidation in any way by any state agent, or other person acting on behalf of the State, to a witness concerning the giving or not giving of any testimony, cooperation or information in this case.

MEMORANDUM

The State, of course, has a constitutional obligation to disclose to a defendant any consideration that has been

given, promised or any way held out to a witness. Graves v State, 489 S.W.2d 74 (Tenn.Cr.App. 1972).

In Giglio v United States, 405 U.S. 150 (1972), the Supreme Court made plain that the prosecution's duty to disclose was an affirmative one and that ignorance of one prosecutor about the promises made to a government witness by another prosecutor does not excuse the failure to disclose. In accordance with Giglio, id., the District Attorney must make an appropriate inquiry to determine what consideration, broadly defined, has been offered to or bestowed upon its witnesses.

In addition to disclosing any promise of consideration that might promote a witness cooperation, the State must make known to the Defendant any communication that might cause the witness to color his testimony in favor of the State out of fear or interest in self-preservation. Consequently, suggestions by any State agent about the witness' possible vulnerability to prosecution, parole, or probation revocation, or other sanctioned by the State must be disclosed to the Defendant. See eg., United States v Sutton, 542 F.2d 1239 (4th Cir. 1976).

The existence of any promise or suggestion by the State of favorable or harsh treatment to a witness is obviously, extremely relevant to the witness credibility, and courts have made plain that failure to disclose such information violates a defendant's Fifth and Sixth Amendment rights. Giglio v United States, *supra*; United States v McCrane, 527 F2d 906 (3rd Cir. 1975), *aff'd* after remand, 547 F2d 205 (1976); Luwinski v Ristaino, 448 F. Supp. 690 (D. Mass. 1978). To enable the Defendant to prepare for trial, he respectfully requests that the Motion be granted and that disclosure be made as soon as possible.

Respectfully submitted this the 15 day of OCTOBER,
1992.

GARY W. SUTTON, DEFENDANT

BY: David W. Webb
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~U.S. MAIL~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
DAVID W. WEBB, ATTORNEY

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT FILED	
HOUR	AM
DATE: OCT 15 1992	NO. 5033, 5034
JAMES W. GREENLEE	
CIRCUIT CLERK	
SEVIER COUNTY, TENN.	

MOTION FOR ALLOCUTION

COMES the Defendant, Gary W. Sutton, by and through counsel, and moves this Honorable Court to allow the Defendant to address the Jury at his sentencing hearing without being cross-examined by the State.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXXX~~ HAND DELIVERY.

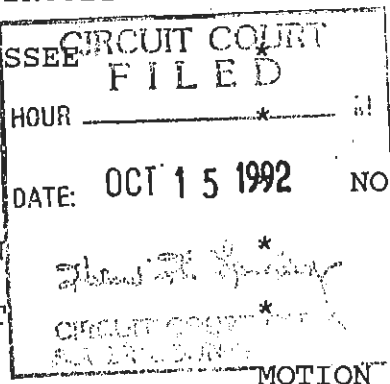
THIS the 15 day of OCTOBER, 1992.

DAVID W. WEBB, ATTORNEY

jul92\b\s-alloc

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT



COMES the Defendant, Gary W. Sutton, by and through his counsel, and moves this Honorable Court to issue an Order restricting the prosecution's proof at the sentencing hearing to the specific aggravating circumstance that has been enumerated by the prosecution.

THE Defendant requests a hearing on this Motion.

MEMORANDUM OF LAW

IN 1979 the Tennessee Supreme Court in the case of Cozzolino v State, 584 S.W.2d 765 (Tenn. 1979) held that evidence is relevant to punishment in the sentencing hearing of a death penalty case, thus admissible, only if it is relevant to an aggravating circumstance raised by the State or to a mitigating factor raised by the accused.

Respectfully submitted this the 15 day of OCTOBER, 1992.
GARY W. SUTTON, DEFENDANT

BY: David W. Webb
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
DAVID W. WEBB, ATTORNEY

jul92\b\s-restri.sen

185

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT	
FILED	
HOUR _____	AM _____
DATE: OCT 15, 1992	
NO. 5033, 5034	
<i>John W. Greenlee</i>	
CIRCUIT COURT SEVIER COUNTY, TN	

MOTION TO STRIKE THE DEATH PENALTY

COMES THE DEFENDANT, Gary W. Sutton, by and through counsel, and hereby moves this Honorable Court to issue an Order striking the State's demand for the death penalty in this cause and in support would show to the Court as follows:

1. That the State has put the Defendant on Notice of the death penalty citing one statutory aggravating circumstance: "That the murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another."
2. That all jurisdictions have interpreted this aggravating factor as applying to actual witnesses to the crime.
3. That the State of Tennessee has no proof that the victim in this case was a witness to any crime committed by the Defendant.
4. The State, in its Response to Defendant's Motion for Bill of Particulars filed in this record on July 13, 1992, stated that its position was that those present when each offense occurred were this Defendant and James Dellinger.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: *David W. Webb*

DAVID W. WEBB, ATTORNEY

James W. Greenlee

JAMES W. GREENLEE, ATTORNEY

FOR DEFENDANT, GARY SUTTON

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.



DAVID W. WEBB, ATTORNEY

jul92\b\s-excul.evi

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE CIRCUIT COURT
FILED

PLAINTIFF

VS.

VS.

DATE: OCT 15 1992 NO. 15033, 5034

GARY W. SUTTON

*

DEFENDANT

*

MOTION TO PRODUCE ALL EXCULPATORY MATERIAL

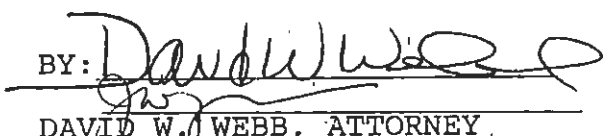
AND INFORMATION

COMES the Defendant, Gary W. Sutton, by and through counsel and moves this Honorable Court for an Order requiring the State to furnish to his attorney all information of whatever form, source and nature, which tends to exculpate the Defendant either through an indication of his innocence or through the potential impeachment of State's witnesses and all information which may be or may become beneficial to the Defendant in the preparation for or the presenting of the merits of his defense of innocence at trial. This request specifically includes all information or evidence of whatever form, source or nature which the District Attorney General's Office, the State Bureau of Investigation, the Sevier County Sheriff's Department, or any other sheriff's department or law enforcement agency of any kind the State might have in their possession or with the exercise of due diligence would discover.

Respectfully submitted this the 15 day of OCTOBER,
1992.

GARY W. SUTTON, DEFENDANT

BY:


DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN: 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.



DAVID W. WEBB, ATTORNEY

jul92\b\s-daily.tra

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE	
STATE OF TENNESSEE	CIRCUIT COURT FILED
PLAINTIFF	HOUR _____
VS.	DATE: OCT 15 1992
GARY W. SUTTON	NO. 5033, 5034
DEFENDANT	<i>James W. Greenlee</i> CIRCUIT COURT SEVIER COUNTY, TENN.

MOTION FOR DAILY TRANSCRIPT

COMES the Defendant, Gary W. Sutton, by and through counsel, and moves this Honorable Court to provide a daily transcript of all trial proceedings and in support of the Motion says:

1. That the Defendant is charged with first degree murder of Connie Branam and if convicted could be sentenced to death in the electric chair. Thus, this case required every procedural safeguard pursuant to the Sixth, Eighth and Fourteenth Amendments to the United States Constitution.
2. A review of the daily proceedings is essential to permit the defense counsel to adequately prepare the Defendant's case.
3. A daily transcript is necessary in order to provide the effective assistance of counsel as mandated by both Federal and State Constitutions.
4. Defendant avers that the trial will take several days and as a result a daily transcript would assist the Defendant greatly in preparing his defense.

WHEREFORE, the Defendant, Gary W. Sutton, moves this Honorable Court to grant the relief sought in this Motion.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: *David W. Webb*
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

190

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ MAIL HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.



DAVID W. WEBB, ATTORNEY

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT FILED	
HOUR	MI
DATE: OCT 15 1992	
NO. 5033, 5034	
CIRCUIT COURT SEVIER COUNTY	

MOTION FOR STATE AGENTS TO RETAIN ROUGH NOTES

COMES the Defendant, Gary W. Sutton, through his counsel, and respectfully moves this Honorable Court to enter an Order requiring all State agents who investigated the events resulting in the instant prosecution to retain and preserve all notes taken as a part of their investigation, regardless of whether or not the contents of the notes have been or will be incorporated into official records.

MEMORANDUM IN SUPPORT OF MOTION FOR STATE AGENTS
TO RETAIN ROUGH NOTES

The purpose of this Motion is to insure that the trial court can make an informed determination of whether the disclosure of the notes is required by statutory or constitutional law. The production of statements of witnesses is governed in our courts by Rule 26.2 of the Tennessee Rules of Criminal Procedure. That rule is substantially identical to the same rule in the Federal Rules of Criminal Procedure. The obligation of the government to preserve discoverable evidence has been addressed in the Federal system in the case of United States v Bryant, 439 F2d 642 (1971). In that case the Government argued that its constitutional and statutory duty to disclose certain evidence to the defendant extended only to evidence currently in its possession. Rejecting this position, the Court of Appeals made plain that the government has a duty to preserve all material arguably producible under Brady v Maryland, 373 U.S. 83 (1963), 18

U.S.C. 3500, and Rule 16 of the F.R.Cr.P.:

Technically, it may be that evidence which cannot be found is not in the government's "possession." And, of course, that which the government does not have, it cannot disclose. But this line of reasoning is far too facial, and clearly self-defeating. The language of Brady, Rule 16 and the Jencks Act includes no reference to the timing of possession and suppression. It is most consistent with the purposes of those safeguards to hold that the duty of disclosure attaches in some form once the government has first gathered and taken possession of the evidence in question. Otherwise disclosure might be avoided by destroying vital evidence before prosecution begins or before defendants hear of its existence. Hence we hold that before a request for discovery has been made, the duty of disclosure is operative as a duty of preservation. Only if evidence is carefully preserved during the early stages of investigation will disclosure be possible later.

Id. at 650.

Accordingly, the preservation of the notes and memorandum by all offices and agents involved in the investigation of this case is manifestly in the interest of justice and will enable the State to satisfy its statutory and constitutional obligations in this State.

Respectfully submitted this the 15 day of OCTOBER,
1992. GARY W. SUTTON, DEFENDANT

BY: David W. Webb
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb

DAVID W. WEBB, ATTORNEY

jul92\b\s-preser.not

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
CIRCUIT COURT
STATE OF TENNESSEE FILED

PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

HOUR _____ IN
DATE: OCT 15 1992 NO. 5033, 5034
CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

MOTION TO COMPEL DISCLOSURE OF THE EXISTENCE AND SUBSTANCE
OF PROMISES OF IMMUNITY, LENIENCY OR PREFERRED TREATMENT

COMES the Defendant, Gary W. Sutton, by and through
counsel, and respectfully moves this Honorable Court to
Order the State to disclose to him the existence and
substance of any promises of immunity, leniency or preferred
treatment. Specifically, the Defendant requests that the
State make the following information available:

1. The existence, substance and the manner of execution
or fulfillment of any promise, statement, agreement,
understanding, or arrangement, either verbal, written or
implied between the State or its agents and any prosecution
witness or cooperating individual, or such person's
attorneys or representatives, for the purpose of obtaining
said person's testimony or cooperation, or the disclosure of
information by the person to the State, wherein the State or
any of its agents has agreed to do or has suggested it would
do any of the following:

a) Not prosecute said person for any crime or crimes or
recommend that the person not be prosecuted for any past or
future criminal conduct;

b) Not prosecute a third party for any crime or crimes
where the reason for not prosecuting the third party is the
consideration to the person;

c) Provide a formal grant of statutory immunity or to
provide an informal assurance that the person will not be
prosecuted in connection with any testimony, cooperation, or
information given by him or her;

d) Recommend leniency or a particular sentence for any crime or crimes for which he or she stands convicted or believes might be convicted;

e) Comply with any prior agreements although said witness may have previously violated a part of his agreement;

f) Provide favorable treatment or consideration, including, but not limited to, money, a job, a new location, a new start, etc..., to the person himself or to friends or relatives of the person in return for his or her testimony, cooperation, and provision of information;

g) Make any recommendation of benefit to the person, to any state or federal agency including, but not limited to, any state or federal agency including, but not limited to, any state or federal law enforcement agency; and,

h) Cooperate with any state law enforcement agency in that agency's agreement not to prosecute said person for any crime or crimes prohibited by state law; and,

i) Make any other recommendation of benefit, or give any other consideration to the person or friends or relatives of said person.

2. Any cancelled check, receipt, voucher, or any other document produced as a result of any promise, statement, agreement, understanding or arrangement by which any of the above was provided to the person or by which record was kept of such by the State.

3. The substance and manner of execution of any threat of prosecution or intimidation in any way by any state agent, or other person acting on behalf of the State, to a witness concerning the giving or not giving of any testimony, cooperation or information in this case.

MEMORANDUM

The State, of course, has a constitutional obligation to disclose to a defendant any consideration that has been

given, promised or any way held out to a witness. Graves v State, 489 S.W.2d 74 (Tenn.Cr.App. 1972).

In Giglio v United States, 405 U.S. 150 (1972), the Supreme Court made plain that the prosecution's duty to disclose was an affirmative one and that ignorance of one prosecutor about the promises made to a government witness by another prosecutor does not excuse the failure to disclose. In accordance with Giglio, id., the District Attorney must make an appropriate inquiry to determine what consideration, broadly defined, has been offered to or bestowed upon its witnesses.

In addition to disclosing any promise of consideration that might promote a witness cooperation, the State must make known to the Defendant any communication that might cause the witness to color his testimony in favor of the State out of fear or interest in self-preservation. Consequently, suggestions by any State agent about the witness' possible vulnerability to prosecution, parole, or probation revocation, or other sanctioned by the State must be disclosed to the Defendant. See eg., United States v Sutton, 542 F.2d 1239 (4th Cir. 1976).

The existence of any promise or suggestion by the State of favorable or harsh treatment to a witness is obviously extremely relevant to the witness credibility, and courts have made plain that failure to disclose such information violates a defendant's Fifth and Sixth Amendment rights. Giglio v United States, *supra*; United States v McCrane, 527 F2d 906 (3rd Cir. 1975), *aff'd after remand*, 547 F2d 205 (1976); Luwinski v Ristaino, 448 F. Supp. 690 (D. Mass. 1978). To enable the Defendant to prepare for trial, he respectfully requests that the Motion be granted and that disclosure be made as soon as possible.

Respectfully submitted this the 15 day of OCTOBER,
1992.

GARY W. SUTTON, DEFENDANT

196

BY:

David W. Webb
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~U.S. MAIL~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
DAVID W. WEBB, ATTORNEY

jul92\b\s-promis.wit

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

FILED

PLAINTIFF

VS.

DATE: OCT 15 1992 *

NO. 5033, 5034

GARY W. SUTTON

DEFENDANT

MOTION FOR INDIVIDUAL AND SEQUESTERED VOIR DIRE

COMES the Defendant, Gary W. Sutton, by and through counsel and moves this Honorable Court to issue an Order allowing individual and sequestered voir dire in the above styled case and would show the Court as follows:

1. That this case has received a large deal of pre-trial publicity which may be prejudicial to the Defendant and in order to secure the rights to a fair trial as guaranteed by the United States and Tennessee Constitutions, individual and sequestered voir dire is necessary. The Defendant requests a hearing on this Motion.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

DAVID W. WEBB, ATTORNEY

jul92\b\s-seque.vrd

198

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

CIRCUIT COURT
FILED

VS.

HOUR

NO. 5033, 5034

GARY W. SUTTON

DATE: OCT 15 1992

DEFENDANT

MOTION TO STRIKE ANTICIPATED JURY CHARGE

COMES the Defendant, Gary W. Sutton, by and through counsel, and in anticipation that this Court will charge the Jury in accordance with the Tennessee Pattern Jury Instructions, the Defendant hereby moves this Court to strike the last paragraph of said instructions which reads as follows:

The Jury in no case, should have any sympathy or prejudice or allow anything but the law and evidence to have any influence upon them in determining their verdict.

MEMORANDUM OF LAW

IN the case of Saffle v Parks, 88-1264, Cert. Granted U.S. _____, 45 Crim.Law Reporter 4021, 4022 (April 24, 1989), death sentence was reversed where the trial judge charged the Jury that they were not to consider sympathy for the Defendant in arriving at that their verdict.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~U.S. MAIL~~ HAND DELIVERY.

THIS the 15 day of October, 1992.



DAVID W. WEBB, ATTORNEY

jul92\b\s-strike.sym

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

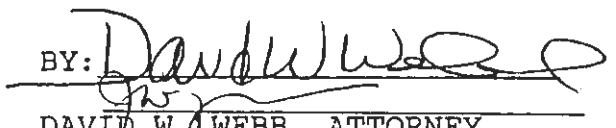
FILED
OCT 15 1992 NO. 5033, 5034

MOTION TO PRODUCE ALL EXCULPATORY MATERIAL
AND INFORMATION

COMES the Defendant, Gary W. Sutton, by and through counsel and moves this Honorable Court for an Order requiring the State to furnish to his attorney all information of whatever form, source and nature, which tends to exculpate the Defendant either through an indication of his innocence or through the potential impeachment of State's witnesses and all information which may be or may become beneficial to the Defendant in the preparation for or the presenting of the merits of his defense of innocence at trial. This request specifically includes all information or evidence of whatever form, source or nature which the District Attorney General's Office, the State Bureau of Investigation, the Sevier County Sheriff's Department, or any other sheriff's department or law enforcement agency of any kind the State might have in their possession or with the exercise of due diligence would discover.

Respectfully submitted this the 15 day of OCTOBER,
1992.

GARY W. SUTTON, DEFENDANT

BY: 

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

201

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.



DAVID W. WEBB, ATTORNEY

jul92\b\s-daily.tra

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT	
FILED	
HOUR _____	AM
DATE: OCT 15 1992	
<i>Shawn R. Spalding</i>	
CIRCUIT COURT * SEVIER COUNTY	

NO. 5033, 5034

MOTION TO COMPEL STATE TO FULLY RESPOND

TO DEFENDANT'S MOTION FOR BILL OF PARTICULARS

COMES THE DEFENDANT, Gary W. Sutton, by and through counsel, and shows this Honorable Court as follows:

1. That on April 10, 1992 Defendant filed a Motion for Bill of Particulars.

2. That on July 13, 1992 Defendant received the State's Response.

3. Defendant avers that the Response is incomplete and inadequate and therefore is not in compliance with Rule 7(c) of the Tennessee Rules of Criminal Procedure as follows:

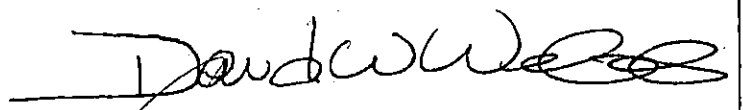
a) Specifically, the State has failed in their Response to state the date and time of Connie Branam's death and the Defendant affirmatively avers that same is not in the Discovery Response of the State.

b). The State says that this Defendant is party to these offenses pursuant to T.C.A. §39-11-401, et seq. Pursuant thereto, Defendant requests the State to elect under the above captioned statutes specifically which statute the State is electing to pursue in their attempts to convict this Defendant.

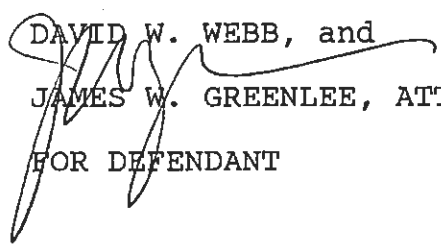
THEREFORE, Defendant moves this Court for an Order to compel the State to completely and accurately respond to Motion for Bill of Particulars previously filed by Defendant; otherwise this Defendant will be denied his right to a fair trial in this cause.

Respectfully submitted this the 15-day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT



BY: _____



DAVID W. WEBB, and
JAMES W. GREENLEE, ATTORNEYS
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.



DAVID W. WEBB, ATTORNEY

jul92\b\s-mot-cp.st

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT FILED	
HOUR _____	AM
DATE: OCT 15 1992 NO. 5033, 5034	
<i>Alvin H. Greenlee</i>	
CIRCUIT COURT SEVIER COUNTY	
MOTION FOR TRIAL DATE	

COMES THE DEFENDANT, Gary W. Sutton, by counsel, and moves this Honorable Court to order the District Attorney General to provide a trial date no later than five (5) days after appearance date. Specifically, the Defendant, by and through counsel, makes this request in order to have a reasonable amount of time in which to subpoena any witnesses on his behalf.

RESPECTFULLY SUBMITTED:

THIS the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: *David Webb*

DAVID W. WEBB

James W. Greenlee
JAMES W. GREENLEE

ATTORNEYS FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David Webb
DAVID W. WEBB, ATTORNEY

oct92\b\sut-tri.dt

205

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE
PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

CIRCUIT COURT
FILED
HOUR _____
DATE: OCT 15 1992
NO. 5033, 5034

MOTION FOR PRETRIAL DISCLOSURE OF
STATEMENTS OF PROSECUTION WITNESSES

COMES the Defendant, Gary W. Sutton, by and through counsel, and respectfully moves this Honorable court to Order the District Attorney General's office to provide the Defendant's attorneys with copies of the statements of prosecution witnesses prior to the time of trial. In support of this Motion, Defendant would show the Court as follows:

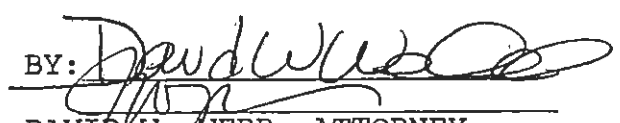
1. That this matter has yet to be set but counsel anticipates that it will take several days for the trial.
2. That the State is seeking the death penalty for the Defendant in this cause.
3. That pretrial discovery provided by the District Attorney General's Office has revealed very little, if any, physical evidence linking the Defendant, Gary W. Sutton, to the murder of Connie Branam.
4. That the testimony of certain witnesses is crucial to the determination of this case and that the Defendant does not have readily available access to some of these witnesses. That State's discovery indicates the State will potentially call seventy-five (75) witnesses, more or less, to testify. That due to this fact, the Defendant would require lengthy recesses in order to investigate the testimony of these witnesses so that they may be cross examined.
5. That because of this, the trial would be forced to continue longer than necessary.

WHEREFORE, Defendant prays that this Court order that

the Attorney general's Office disclose the statements of these witnesses prior to trial.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: 

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXXXXXX~~. HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.


DAVID W. WEBB, ATTORNEY

jul92\b\s-dis-st.wit

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

DATE: OCT 15 1992 NO. 5033, 5034

MOTION TO STRIKE THE DEATH PENALTY

COMES THE DEFENDANT, Gary W. Sutton, by and through counsel, and hereby moves this Honorable Court to issue an Order striking the State's demand for the death penalty in this cause and in support would show to the Court as follows:

1. That the State has put the Defendant on Notice of the death penalty citing one statutory aggravating circumstance: "That the murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another."

2. That all jurisdictions have interpreted this aggravating factor as applying to actual witnesses to the crime.

3. That the State of Tennessee has no proof that the victim in this case was a witness to any crime committed by the Defendant.

4. The State, in its Response to Defendant's Motion for Bill of Particulars filed in this record on July 13, 1992, stated that its position was that those present when each offense occurred were this Defendant and James Dellinger.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: David Webb
DAVID W. WEBB, ATTORNEY

James W. Greenlee
JAMES W. GREENLEE, ATTORNEY

FOR DEFENDANT, GARY SUTTON

208

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.



DAVID W. WEBB, ATTORNEY

jul92\b\s-excul.evi

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

DATE: OCT 15 1992 NO. 5033, 5034

MOTION

COMES the Defendant, Gary W. Sutton, by and through his counsel, and moves this Honorable Court to issue an Order restricting the prosecution's proof at the sentencing hearing to the specific aggravating circumstance that has been enumerated by the prosecution.

THE Defendant requests a hearing on this Motion.

MEMORANDUM OF LAW

IN 1979 the Tennessee Supreme Court in the case of, Cozzolino v State, 584 S.W.2d 765 (Tenn. 1979) held that evidence is relevant to punishment in the sentencing hearing of a death penalty case, thus admissible, only if it is relevant to an aggravating circumstance raised by the State or to a mitigating factor raised by the accused.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: David W. Webb
 DAVID W. WEBB, ATTORNEY
 JAMES W. GREENLEE, ATTORNEY
 FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
 DAVID W. WEBB, ATTORNEY

jul92\b\s-restri.sen

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

DATE: OCT 15 1992 NO. 5033, 5034

MOTION FOR ALLOCUTION

COMES the Defendant, Gary W. Sutton, by and through counsel, and moves this Honorable Court to allow the Defendant to address the Jury at his sentencing hearing without being cross-examined by the State.

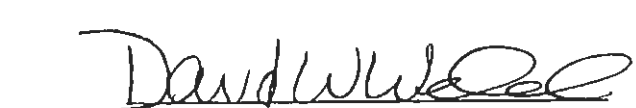
Respectfully submitted this the 15 day of OCTOBER, 1992. GARY W. SUTTON, DEFENDANT

BY: 
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN., 37725-0416 by ~~US MAIL~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.


DAVID W. WEBB, ATTORNEY

jul92\b\s-alloc

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

DATE: OCT 15 1992	NO. 5033, 5034
MOTION	

COMES the Defendant, by and through counsel, and moves this Honorable Court to limit its instruction to the jury at the sentencing phase to charging only the one specific aggravating factor the State is relying on in this case and in support would show as follow:

1. That the patterned instructions for the State of Tennessee for the fixing of punishment of death or life imprisonment lists each statutory aggravating factor.

2. That the State of Tennessee in this case has only given notice of the presence of one statutory aggravating factor.

3. That it appears the State of Tennessee will be limited to the proving of one statutory aggravating factor and therefore there is no need to charge all twelve statutory aggravating factors and this could only serve to prejudice the Defendant.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: David W. Webb
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third

Floor, County Courthouse, Sevierville, TN. 37862 and to Mr.
Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN.
37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.



DAVID W. WEBB, ATTORNEY

jul92\b\s-ag-fac.ch

Courtesy of
Time of Death Podcast
by Beth Braden

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

DATE: OCT 15 1992

NO. 5033, 5034

GARY W. SUTTON

DEFENDANT

MOTION TO PERMIT THE DEFENDANT TO ARGUE LAST

COMES the Defendant, Gary Sutton, by and through counsel, and moves this Honorable court for an Order permitting the Defendant's attorneys to argue to the jury last. Due to the heightened standard of due process and the heightened standard of reliability that attaches in a death penalty hearing, and further due to the fact that the Defendant's life is at stake, the Defendant respectfully submits that he should be allowed to argue to the jury last. The Defendant understands that the Tennessee Supreme Court has disagreed with this argument. State v Melson, S.W.2d 342 (Tenn.1982). The Defendant submits that he should be entitled to this right in any event since it is his life that hinges on the jury's decision. Studies have shown that there is an inherent advantage in having the final jury argument. Common sense would show that the Party with the last word would tend to have an advantage since they could rebut or refute anything that was said at previous arguments.

Therefore to permit the State to have the final word in a case in which the Defendant's life hangs in the balance, violates all notions of fundamental fairness.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~. HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.



DAVID W. WEBB, ATTORNEY

jul92\b\s-argue.lst

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

FILED	
DATE: OCT 15 1992	NO. 5033, 5034

MOTION TO PROHIBIT DEATH QUALIFICATIONS OF JURORS

COMES the Defendant, Gary W. Sutton, by and through counsel, and moves this Honorable Court to not allow the death qualification of the guilt jury in the above captioned cause. Defendant contends that this qualification process distorts the composition of the jury panel and automatically creates a situation in which jurors that sit in the case are more prosecution prone, not only as to sentence, but also as to guilt. Such qualification violates the Defendant's Sixth Amendment rights to a fair trial and as such cannot be tolerated in this case.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY:

David W. Webb
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~US MAIL~~. HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
DAVID W. WEBB, ATTORNEY

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

DATE: OCT 15, 1992

NO. 5033, 5034

MOTION FOR BILL OF PARTICULARS

REGARDING STATUTORY AGGRAVATING CIRCUMSTANCES

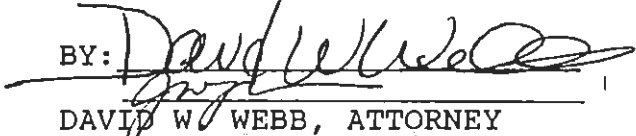
COMES the Defendant, Gary W. Sutton, through his counsel, and respectfully moves this Honorable Court to order the State to furnish a BILL OF PARTICULARS, pursuant to Rule 7(c), Tennessee Rules of Criminal Procedure, setting forth the following information:

1. The facts that will be proven to substantiate the statutory aggravating circumstance that the murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the Defendant or another as set forth in T.C.A. §39-13-204(i)(6).

2. The date, time and location that the above facts occurred and the involvement of the Defendant, Gary W. Sutton, in facilitating the facts.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT,

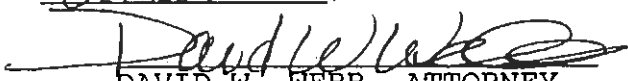
BY: 

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.


DAVID W. WEBB, ATTORNEY

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE . . . *

PLAINTIFF
VS. DATE: OCT 15 1992 NO. 5033, 5034
GARY W. SUTTON
DEFENDANT

MOTION TO EXCLUDE AGGRAVATING FACTOR

COMES THE DEFENDANT, Gary W. Sutton, by and through counsel, and moves this Honorable court to exclude the aggravating factor " The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another" as an aggravating factor in the above styled cause in that that factor is unconstitutionally vague.

Respectfully submitted this the 15 day of OCTOBER, 1992. GARY W. SUTTON, DEFENDANT

BY: David W. Webb
DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~UXXXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
DAVID W. WEBB, ATTORNEY

jul92\b\factor.vag

218

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT
FILED

HOUR

DATE: OCT 15 1992

NO. 5033, 5034

NOTICE OF ALIBI DEFENSE

PLEASE TAKE NOTICE that at the trial of this cause on the merits the Defendant intends to offer and rely upon the defense of alibi.

THE Defendant was at the residence of James Dellinger or on his way to the residence of James Dellinger at the time of each offense alleged in the Presentments. The Defendant may call as witnesses the following individuals:

Linda Dellinger

Carolyn Weaver

Eddie Buchannan, et ux

Jimmy Sutton, et ux

Angela Gray

Jennifer Branan

The Defendant may elect to testify in his own behalf relative to the defense of alibi.

THIS Notice is given in response to a request for Notice of Alibi Defense served on this Defendant, through his counsel.

Furthermore, the Defendant requests, pursuant to Rule 12.1(b) of the Tennessee Rules of Criminal Procedure that the District Attorney General serve upon this Defendant, or his attorney(s), a written Notice stating the names and addresses of the witnesses upon whom the State intends to rely to establish this Defendant's presence at the scene of the alleged offenses and any other witnesses to be relied on to rebut testimony of any of this Defendant's alibi witnesses.

Respectfully submitted this the 15 day of OCTOBER,
1992.

GARY W. SUTTON, DEFENDANT

BY: David W. Webb

DAVID W. WEBB, ATTORNEY

James W. Greenlee
JAMES W. GREENLEE, ATTORNEY

FOR DEFENDANT, GARY W. SUTTON

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this
date sent a true and exact copy of the foregoing Notice to
the State of Tennessee, District Attorney General, Third
Floor, County Courthouse, Sevierville, TN. 37862 and to Mr.
Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN.
37725-0416 by Hand Delivery.

THIS the 15 day of OCTOBER, 1992.

David W. Webb

DAVID W. WEBB, ATTORNEY

oct92\b\sut-al.def

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT	
FILED	
HOUR	DATE: OCT 15 1992
	NO. 5033, 5034
CIRCUIT COURT SEVIER COUNTY	

MOTION TO DISCLOSE UNCHARGED CONDUCT

COMES the Defendant, by and through counsel, and moves this Honorable Court for an Order compelling the State to disclose uncharged conduct it intends to relay on at trial.

MEMORANDUM IN SUPPORT OF MOTION FOR DISCLOSURE OF UNCHARGED CONDUCT ON WHICH THE STATE INTENDS TO RELAY AT TRIAL

It is well established that in a criminal trial, evidence that the Defendant has committed some other crime is independent of that for which he is charged, even though it is a crime of the same character, is usually not admissible because it is irrelevant. Mays v State, 145 Tenn. 118, 230 S.W. 1096 (1921); Lee v. State, 194 Tenn. 652, 254 S.W.2d 747 (1953). Tennessee has long adhered to the doctrine that the admission of proof of other crimes is "contrary to the general rules of evidence that proof of a transaction not charged in the indictment...be received at all". Rabin, Tennessee Criminal Practice and Procedure, Section 27.281, p. 522, citing Peek v State, 21 Tenn. (2Hump.) 78, 87 (1840); State v Fisher, 670 S.W.2d 232 (Tenn. Crim. App. 1983).

Such proof is highly prejudicial and the risk is great that a jury may conclude the Defendant is a bad person likely to commit the offenses for which he is on trial. Schockley v State, 585 S.W. 2d 645 (Tenn. Crim. App. 1978). Inherent dangers attend the use of "other crimes" evidence. In order to minimize these dangers and to insure that such evidence is not offered for abusive purpose, the Tennessee Supreme Court has reaffirmed the criteria for admissibility of evidence of other crimes. The State must first

221

demonstrate that the evidence has an independent basis of relevancy to some matter actually an issue in the case at trial. After an initial showing, the Court will weigh the evidence and determine if the probative value outweighs the prejudicial upon the Defendant. Only by meeting both requirements of this two prong analysis of admissibility can such evidence be properly admitted. State v Parton, 694 S.W. 2d 299, 302-3 (Tenn. 1985); Bunch v State, 605 S.W.2d 299, 229-30 (Tenn. 1980).

Fundamental fairness requires the Defendant to have notice, pursuant to Rule 12(d)(2), Tennessee Rules of Criminal Procedure of the State's intention and opportunity to review the evidence involved in pretrial. Our motion seeks notice and disclosure so that we may inform this Court of matters which will assist in its understanding and determination of this admissibility question. Thus our motion seeks to avoid surprise at trial and the opportunity to meaningfully prepare for the potential tendering of such evidence so that this evidentiary ruling may be made in a fair and informed manner.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: 

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXXXXXX~~. HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.


DAVID W. WEBB, ATTORNEY

jul\92\b\s-ds-unc.con

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

DATE: OCT 15 1992

NO. 5033, 5034

GARY W. SUTTON

DEFENDANT

MOTION FOR INDIVIDUAL AND SEQUESTERED VOIR DIRE EXAMINATION

COMES the Defendant, Gary W. Sutton, by and through counsel, and respectfully moves this Honorable Court for an Order directing that the method of jury selection and the trial of this cause be individual and sequestered, the method in which each perspective juror is examined by counsel outside the presence of other chosen and perspective jurors. In support of this Motion the Defendant would respectfully show:

1. This case has received considerable attention from the news media and therefore there is reason to believe the perspective jurors have been influenced by the dissemination of potentially prejudicial material.

2. The usual method of jury selection by Voir Dire of the whole panel of perspective jurors will result in the exposure of the entire panel to prejudicial material recited by the particular juror being examined. perspective jury panels seated in the courtroom awaiting call for service would also be needlessly contaminated by our usual procedures.

3. These usual procedures are inappropriate in a case such as the one at bar where a significant possibility exists that a juror will be ineligible to serve because of exposure to potentially prejudicial material. The procedure of individual and sequestered Voir Dire is thus far preferable to the usual panel Voir Dire.

WHEREFORE, Defendant respectfully moves this Court for the entry of an Order designating that the panel of

223

perspective jurors to be sequestered and that the parties be permitted to individually examine perspective jurors.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: 

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ US Mail. HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.


DAVID W. WEBB, ATTORNEY

jul92\b\s-seques.jur

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

CIRCUIT COURT
FILED
HOUR
DATE: OCT 15 1992
NO. 5033, 5034
CLERK OF COURT
SEVIER COUNTY

MOTION TO COMPEL STATE TO FULLY RESPOND

TO DEFENDANT'S MOTION FOR BILL OF PARTICULARS

COMES THE DEFENDANT, Gary W. Sutton, by and through counsel, and shows this Honorable Court as follows:

1. That on April 10, 1992 Defendant filed a Motion for Bill of Particulars.

2. That on July 13, 1992 Defendant received the State's Response.

3. Defendant avers that the Response is incomplete and inadequate and therefore is not in compliance with Rule 7(c) of the Tennessee Rules of Criminal Procedure as follows:

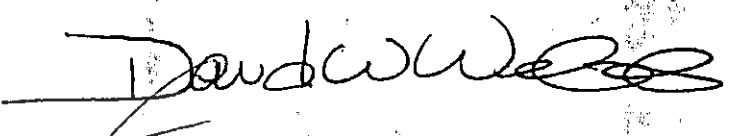
a) Specifically, the State has failed in their Response to state the date and time of Connie Branam's death and the Defendant affirmatively avers that same is not in the Discovery Response of the State.

b) The State says that this Defendant is party to these offenses pursuant to T.C.A. §39-11-401, et seq. Pursuant thereto, Defendant requests the State to elect under the above captioned statutes specifically which statute the State is electing to pursue in their attempts to convict this Defendant.

THEREFORE, Defendant moves this Court for an Order to compel the State to completely and accurately respond to Motion for Bill of Particulars previously filed by Defendant; otherwise this Defendant will be denied his right to a fair trial in this cause.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT


BY: _____

DAVID W. WEBB, and
JAMES W. GREENLEE, ATTORNEYS
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~ HAND DELIVERY.

THIS the 15 day of October, 1992.


DAVID W. WEBB, ATTORNEY

jul92\b\s-mot-cp.st

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
FILED
OCT 15 1992
NO. 5033, 5034
MOTION FOR TRIAL DATE

COMES THE DEFENDANT, Gary W. Sutton, by counsel, and moves this Honorable Court to order the District Attorney General to provide a trial date no later than five (5) days after appearance date. Specifically, the Defendant, by and through counsel, makes this request in order to have a reasonable amount of time in which to subpoena any witnesses on his behalf.

RESPECTFULLY SUBMITTED:

THIS the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: David W. Webb

DAVID W. WEBB

James W. Greenlee
JAMES W. GREENLEE

ATTORNEYS FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXXXXXX~~ HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.

David W. Webb
DAVID W. WEBB, ATTORNEY

oct92\b\sut-tri.dt

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

HOUR

DATE: OCT 15 1992

NO. 5033, 5034

MOTION FOR PRETRIAL DISCLOSURE OF

STATEMENTS OF PROSECUTION WITNESSES

COMES the Defendant, Gary W. Sutton, by and through counsel, and respectfully moves this Honorable court to Order the District Attorney General's office to provide the Defendant's attorneys with copies of the statements of prosecution witnesses prior to the time of trial. In support of this Motion, Defendant would show the Court as follows:

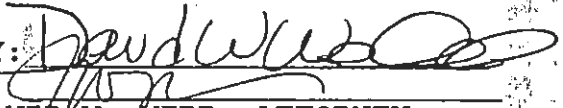
1. That this matter has yet to be set but counsel anticipates that it will take several days for the trial.
2. That the State is seeking the death penalty for the Defendant in this cause.
3. That pretrial discovery provided by the District Attorney General's Office has revealed very little, if any, physical evidence linking the Defendant, Gary W. Sutton, to the murder of Connie Branam.
4. That the testimony of certain witnesses is crucial to the determination of this case and that the Defendant does not have readily available access to some of these witnesses. That State's discovery indicates the State will potentially call seventy-five (75) witnesses, more or less, to testify. That due to this fact, the Defendant would require lengthy recesses in order to investigate the testimony of these witnesses so that they may be cross examined.
5. That because of this, the trial would be forced to continue longer than necessary.

WHEREFORE, Defendant prays that this Court order that

the Attorney general's Office disclose the statements of these witnesses prior to trial.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: 

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXXXXXX~~. HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.


DAVID W. WEBB, ATTORNEY

jul92\b\s-dis-st.wit

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

DATE: OCT 15 1992

NO. 5033, 5034

NOTICE OF ALIBI DEFENSE

PLEASE TAKE NOTICE that at the trial of this cause on the merits the Defendant intends to offer and rely upon the defense of alibi.

THE Defendant was at the residence of James Dellinger or on his way to the residence of James Dellinger at the time of each offense alleged in the Presentments. The Defendant may call as witnesses the following individuals:

Linda Dellinger

Carolyn Weaver

Eddie Buchannan, et ux

Jimmy Sutton, et ux

Angela Gray

Jennifer Branan

The Defendant may elect to testify in his own behalf relative to the defense of alibi.

THIS Notice is given in response to a request for Notice of Alibi Defense served on this Defendant, through his counsel.

Furthermore, the Defendant requests, pursuant to Rule 12.1(b) of the Tennessee Rules of Criminal Procedure that the District Attorney General serve upon this Defendant, or his attorney(s), a written Notice stating the names and addresses of the witnesses upon whom the State intends to rely to establish this Defendant's presence at the scene of the alleged offenses and any other witnesses to be relied on to rebut testimony of any of this Defendant's alibi witnesses.

Respectfully submitted this the 15 day of OCTOBER,
1992.

GARY W. SUTTON, DEFENDANT

BY: David W. Webb

DAVID W. WEBB, ATTORNEY

James W. Greenlee
JAMES W. GREENLEE, ATTORNEY

FOR DEFENDANT, GARY W. SUTTON

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this
date sent a true and exact copy of the foregoing Notice to
the State of Tennessee, District Attorney General, Third
Floor, County Courthouse, Sevierville, TN. 37862 and to Mr.
Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN.
37725-0416 by Hand Delivery.

THIS the 15 day of OCTOBER, 1992.

David W. Webb

DAVID W. WEBB, ATTORNEY

oct92\b\sut-a1.def

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE	HOUR	*
PLAINTIFF		
VS.	DATE: OCT 15 1992	NO. 5033, 5034
GARY W. SUTTON		*
DEFENDANT		*

MOTION TO DISCLOSE UNCHARGED CONDUCT

COMES the Defendant, by and through counsel, and moves this Honorable Court for an Order compelling the State to disclose uncharged conduct it intends to relay on at trial.

MEMORANDUM IN SUPPORT OF MOTION FOR DISCLOSURE OF UNCHARGED CONDUCT ON WHICH THE STATE INTENDS TO RELAY AT TRIAL

It is well established that in a criminal trial, evidence that the Defendant has committed some other crime is independent of that for which he is charged, even though it is a crime of the same character, is usually not admissible because it is irrelevant. Mays v State, 145 Tenn. 118, 230 S.W. 1096 (1921); Lee v. State, 194 Tenn. 652, 254 S.W.2d 747 (1953). Tennessee has long adhered to the doctrine that the admission of proof of other crimes is "contrary to the general rules of evidence that proof of a transaction not charged in the indictment...be received at all". Rabin, Tennessee Criminal Practice and Procedure, Section 27.281, p. 522, citing Peek v State, 21 Tenn. (2Hump.) 78, 87 (1840); State v Fisher, 670 S.W.2d 232 (Tenn. Crim. App. 1983).

Such proof is highly prejudicial and the risk is great that a jury may conclude the Defendant is a bad person likely to commit the offenses for which he is on trial. Schockley v State, 585 S.W. 2d 645 (Tenn. Crim. App. 1978). Inherent dangers attend the use of "other crimes" evidence. In order to minimize these dangers and to insure that such evidence is not offered for abusive purpose, the Tennessee Supreme Court has reaffirmed the criteria for admissibility of evidence of other crimes. The State must first

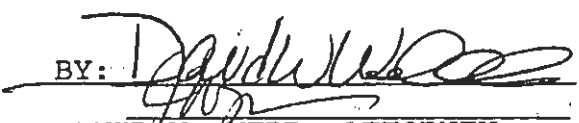
232

demonstrate that the evidence has an independent basis of relevancy to some matter actually an issue in the case at trial. After an initial showing, the Court will weigh the evidence and determine if the probative value outweighs the prejudicial upon the Defendant. Only by meeting both requirements of this two prong analysis of admissibility can such evidence be properly admitted. State v Parton, 694 S.W. 2d 299, 302-3 (Tenn. 1985); Bunch v State, 605 S.W.2d 299, 229-30 (Tenn. 1980).

Fundamental fairness requires the Defendant to have notice, pursuant to Rule 12(d)(2), Tennessee Rules of Criminal Procedure of the State's intention and opportunity to review the evidence involved in pretrial. Our motion seeks notice and disclosure so that we may inform this Court of matters which will assist in its understanding and determination of this admissibility question. Thus our motion seeks to avoid surprise at trial and the opportunity to meaningfully prepare for the potential tendering of such evidence so that this evidentiary ruling may be made in a fair and informed manner.

Respectfully submitted this the 15 day of OCTOBER, 1992.

GARY W. SUTTON, DEFENDANT

BY: 

DAVID W. WEBB, ATTORNEY
JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by ~~XXXXXX~~. HAND DELIVERY.

THIS the 15 day of OCTOBER, 1992.


DAVID W. WEBB, ATTORNEY

jul\92\b\s-ds-unc.con

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

CIRCUIT COURT		AT SEVIERVILLE	
FILED			
HOUR	2:30	M	
STATE OF TENNESSEE	DATE: OCT 15 1992.	)	NO. 5035 & 5036
v.		)	
JAMES DELLINGER	<i>Alvin F. Housday</i>	)	
CIRCUIT COURT CLERK			
SEVIER COUNTY, TENN.			
MOTION			

Comes the defendant, by and through counsel and moves this Honorable Court to order the State to provide the names of all rebuttal witnesses and all witnesses to be used for impeachment purposes. The defendant submits to this Court that without this information he cannot adequately prepare a defense. The defendant understands that this is in the Court's discretion and makes this motion in the interest of justice and fairness and that this is a complex case which involves the death penalty and as a result the defendant submits that the interest of justice requires it under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

Edward C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edward C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE	
AT SEVIERVILLE	
FILED	
HOUR	2:30 M
STATE OF TENNESSEE	DATE: OCT 15 1992
v.	
JAMES DELLINGER	
	CIRCUIT COURT CLERK SEVIER COUNTY, TENN.
	NO. 5035 & 5036

MOTION FOR DAILY TRANSCRIPT

Comes the defendant, by and through counsel, and moves this Honorable Court to provide a daily transcript of all trial proceedings and in support of the motion says:

1. That the defendant is charged with first degree murder and felony murder and if convicted could be sentenced to death in the electric chair. Thus, this case requires every procedural safeguard pursuant to the Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

2. A review of the daily proceedings is essential to permit the defense counsel to adequately prepare the defendant's case.

3. A daily transcript is necessary in order to provide the effective assistance of counsel as mandated by both federal and state constitutions.

4. That the trial is scheduled to last four or five days and as a result a daily transcript would assist the defendant greatly in preparing his defense.

WHEREFORE, the defendant, moves this Honorable Court to grant the relief sought in this Motion.

Respectfully submitted,

Edward C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edna C. Mab

Courtesy of
Time of Death Podcast
by Beth Braden

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

AT SEVIERVILLE
CIRCUIT COURT
FILED
HOUR 2:30 PM
DATE: OCT 15 1992
Circuit Court Clerk
Sevier County, Tenn.

NO. 5035 & 5036

MOTION TO REQUIRE THE STATE TO REVEAL
ANY AGREEMENTS BETWEEN THE STATE AND PROSECUTION WITNESSES

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order requiring the State to reveal any agreement entered into between the District Attorney's office or any other law enforcement agency and any prosecution witness that could conceivably influence said witness' testimony on the following grounds:

1. That the credibility of said witnesses will be an important issue in the principle case and the evidence of any understanding or agreement as to future prosecution would be relevant to such witnesses to credibility, and the trial jury is entitled to know of it.

2. That a refusal to reveal any said agreement constitutes a violation of the Fourteenth Amendment Due Process Clause of the United States Constitution, and Article 1 § 8 of the Tennessee Constitution.

Respectfully submitted,

Edward C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 11th day of October, 1992.

Edward C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

AT SEVIERVILLE
CIRCUIT COURT
FILED
HOUR 2:30 PM
DATE: OCT 15 1992
[Signature]
CIRCUIT COURT CLERK
SEVIER COUNTY, TENNESSEE

NO. 5035 & 5036

MOTION TO REQUIRE THE STATE TO REVEAL
ANY PRIOR CONVICTIONS OF PROSECUTION WITNESSES

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order requiring the State to reveal any prior convictions suffered by the prosecution witnesses and that the credibility of said witnesses will be an important issue in the principle case and the evidence of any prior convictions as to prosecution witnesses will be relevant to such witnesses credibility, and the trial jury is entitled to know of it.

Respectfully submitted,

[Signature]
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

[Signature]

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

JAMES DELLINGER

NO. 5035 & 5036

MOTION

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order prohibiting the State's use of preemptory challenges to exclude any cognizable group of people specifically including jurors whose scruples are against the death penalty. The defendant requests a hearing on this motion.

CIRCUIT COURT	
FILED	
HOUR	2:30
DATE: OCT 15 1992	
<i>Edward C. Miller</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

Respectfully submitted,

Edward C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 15th day of October, 1992.

Edward C. Miller

IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

CIRCUIT COURT SEVIERVILLE	
FILED	
HOUR	2:30
DATE: OCT 15 1992	
<i>Shirley A. Hensley</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

NO. 5035 & 5036

MOTION TO SUPPRESS

Comes the defendant, by and through counsel and moves this Honorable Court for an order suppressing all evidence obtained pursuant to a search warrant issued by the Trial Justice Court on February 29, 1992, and pursuant to a search warrant issued by the Trial Justice Court on February 28, 1992, on the grounds that the affiant did not have personal knowledge of the facts set forth in the affidavit section of the warrant nor does the affidavit reflect who supplied the information so as to allow the magistrate to determine the reliability of the warrant.

Respectfully submitted,

Edward C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 14th day of October, 1992.

Edw C. Miller

IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

AT SEVIERVILLE	
FILED	
HOUR	2:30 M
DATE: OCT 15 1992	
<i>Sharon M. Housley</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	
MOTION IN LIMINE	

NO. 5035 & 5036

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order in limine prohibiting the state from introducing any evidence with regard to the murder of Tommy Griffin.

Respectfully submitted,

Edward C. Miller

EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee, this the 14th day of October, 1992.

Edward C. Miller

IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE

FILED

HOOR 2:30 M

STATE OF TENNESSEE

DATE: OCT 15 1992)

v.

JAMES DELLINGER

NO. 5035 & 5036

CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

MOTION IN LIMINE

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order in limine that the state not include any statement of Tommy Griffin.

Respectfully submitted,

Edw C. Miller

EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee, this the 14th day of October, 1992.

Edw C. Miller

IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

FILED
HOUR 2:30 M

STATE OF TENNESSEE DATE: OCT 15 1992)

NO. 5035 & 5036

v.)

JAMES DELLINGER)

Shelby A. Handley
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

MOTION TO ALLOW ADDITIONAL MOTIONS

Comes the defendant by and through counsel and moves this Honorable Court to issue an order allowing the filing of additional motions in as much as the state has yet to supply the defendant with all discoverable information.

Respectfully submitted,

Edward C. Miller

EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee, this the 14th day of October, 1992.

Ed C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

CAT SEVIER VIDE	
FILED	
HOUR	2:30 M
DATE:	OCT 15 1992
<i>Shirley H. Housley</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

NO. 5035 & 5036

MOTION TO RESTRICT STATE TO SPECIFIC AGGRAVATING FACTORS

Comes the defendant, by and through counsel, and moves this Honorable Court as follows:

1. The State filed a Notice of Enhancement Factors in which they listed ^{One} ~~three~~ specific aggravating factors that would be used for enhancement purposes at the sentencing stage should the defendant be convicted of the charge contained in the indictment. This notice is attached as Exhibit "A".

2. That since that time the state has not given the defendant notice of any other enhancement factors and the defendant has no knowledge of any other potential enhancement factors.

3. That as a result of this it would violate the defendant's constitutional rights, both State and Federal, to permit the State to argue any other enhancement factors at the sentencing hearing should the defendant be convicted.

WHEREFORE, the defendant prays that this Court enter an order restricting the State to only those specific enhancement factors as set forth in their Notice.

Respectfully submitted,

Edward C. Miller

EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edward C. Mel

Courtesy of
Time of Death Podcast
by Beth Braden

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEESTATE OF TENNESSEE

CIRCUIT COURT	
FILED	
HOUR	2:30 P.M.
DATE: OCT 15 1992	
<i>Helen K. Loveday</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

VS.

NO. 5035JAMES ANDERSON DELLINGER, ALIASNOTICE OF INTENT TO SEEK DEATH PENALTY

The State intends to seek the death penalty based on the following aggravating circumstance(s) as found in T.C.A. §39-13-204:

T.C.A. §39-13-204(1)(6) - The murder was committed for the purpose of avoiding, interfering, with, or preventing a lawful arrest or prosecution of the defendant or another.

SUBMITTED this 14th day of May, 1992.

Al Schmutzer, Jr.
AL SCHMUTZER, JR.
DISTRICT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I, Al Schmutzer, Jr., District Attorney General for the Fourth Judicial Circuit, do hereby certify that a true and exact copy of the foregoing Notice was mailed this 14 day of May, 1992, to the following:

1. Mr. Ed Miller, Public Defender, P.O. Box 460, Dandridge, TN 37725.
2. Honorable Rex Henry Ogle, Victorian Mall, Sevierville, TN 37862.
3. Ms. Helen Loveday, Circuit Court Clerk, Courthouse, Sevierville, TN 37862.

Al Schmutzer, Jr.
AL SCHMUTZER, JR.
DISTRICT ATTORNEY GENERAL

IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE

HOUR 2:30 p

STATE OF TENNESSEE DATE: OCT 15 1992

V.

JAMES DELLINGER

CIRCUIT COURT SEVER
SEVER COUNTY, TENN

NO. 5035 & 5036

MOTION TO ALLOW ADDITIONAL MOTIONS

Comes the defendant by and through counsel and moves this Honorable Court to issue an order allowing the filing of additional motions in as much as the state has yet to supply the defendant with all discoverable information. 🍷

Respectfully submitted,

Edward C. Miller

EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee, this the 14th day of October, 1992.

Edw C. Mv

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

AT SEVIERVILLE	
CIRCUIT COURT	
FILED	
HOUR	2:30 M
DATE:	OCT 15 1992
<i>Edward C. Miller</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	
MOTION	

NO. 5035 & 5036

Comes the defendant, by and through counsel and moves this Honorable Court to order the State to provide the names of all rebuttal witnesses and all witnesses to be used for impeachment purposes. The defendant submits to this Court that without this information he cannot adequately prepare a defense. The defendant understands that this is in the Court's discretion and makes this motion in the interest of justice and fairness and that this is a complex case which involves the death penalty and as a result the defendant submits that the interest of justice requires it under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

Edward C. Miller
 EDWARD C. MILLER
 Public Defender
 4th Judicial District
 P. O. Box 416
 Dandridge, TN 37725
 615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edward C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

CIRCUIT COURT
SEVIERVILLE
FILED
HOUR 2:30 M

DATE: OCT 15 1992

Edward C. Miller

CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

NO. 5035 & 5036

MOTION FOR DAILY TRANSCRIPT

Comes the defendant, by and through counsel, and moves this Honorable Court to provide a daily transcript of all trial proceedings and in support of the motion says:

1. That the defendant is charged with first degree murder and felony murder and if convicted could be sentenced to death in the electric chair. Thus, this case requires every procedural safeguard pursuant to the Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

2. A review of the daily proceedings is essential to permit the defense counsel to adequately prepare the defendant's case.

3. A daily transcript is necessary in order to provide the effective assistance of counsel as mandated by both federal and state constitutions.

4. That the trial is scheduled to last four or five days and as a result a daily transcript would assist the defendant greatly in preparing his defense.

WHEREFORE, the defendant, moves this Honorable Court to grant the relief sought in this Motion.

Respectfully submitted,

Edward C. Miller

EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edna C. Mab

Courtesy of
Time of Death Podcast
by Beth Braden

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

ALL SEVIERVILLE
CIRCUIT COURT
FILED
HOUR 2:30 M
DATE: OCT 15 1992
Circuit Court Clerk
Sevier County, Tenn

NO. 5035 & 5036

MOTION TO REQUIRE THE STATE TO REVEAL
ANY AGREEMENTS BETWEEN THE STATE AND PROSECUTION WITNESSES

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order requiring the State to reveal any agreement entered into between the District Attorney's office or any other law enforcement agency and any prosecution witness that could conceivably influence said witness' testimony on the following grounds:

1. That the credibility of said witnesses will be an important issue in the principle case and the evidence of any understanding or agreement as to future prosecution would be relevant to such witnesses to credibility, and the trial jury is entitled to know of it.

2. That a refusal to reveal any said agreement constitutes a violation of the Fourteenth Amendment Due Process Clause of the United States Constitution, and Article 1 § 8 of the Tennessee Constitution.

Respectfully submitted,

Edward C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing, to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edward C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

AT SEVIERVILLE	
CIRCUIT COURT	
FILED	
HOUR	2:30 M
DATE:	OCT 15 1992
<i>Sharon T. Gaudin</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

NO. 5035 & 5036

MOTION TO REQUIRE THE STATE TO REVEAL
ANY PRIOR CONVICTIONS OF PROSECUTION WITNESSES

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order requiring the State to reveal any prior convictions suffered by the prosecution witnesses and that the credibility of said witnesses will be an important issue in the principle case and the evidence of any prior convictions as to prosecution witnesses will be relevant to such witnesses credibility, and the trial jury is entitled to know of it.

Respectfully submitted,

Edward C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edward C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

JAMES DELLINGER

)
) NO. 5035 & 5036
)
)
)

MOTION

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order prohibiting the State's use of preemptory challenges to exclude any cognizable group of people specifically including jurors whose scruples are against the death penalty. The defendant requests a hearing on this motion.

CIRCUIT COURT	
FILED	
HOUR	2:30 M
DATE: OCT 15 1992	
<i>Shawn F. Gaudin</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

Respectfully submitted,

Edw C. Miller

EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 17th day of October, 1992.

Edw C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

AT SEVIERVILLE
CIRCUIT COURT
FILED
HOUR 2:30 M
DATE: OCT 15 1992
James H. Housley
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

NO. 5035 & 5036

MOTION FOR INDIVIDUAL AND SEQUESTERED VOIR DIRE

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order allowing individual and sequestered voir dire in the above styled case and would show the Court as follows:

1. That this case has received a large deal of pre-trial publicity which may be prejudicial to the defendant and in order to secure the rights to a fair trial as guaranteed by the United States and Tennessee constitutions, individual and sequestered voir dire is necessary. The defendant requests a hearing on this motion.

Respectfully submitted,

Edw C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edw C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

CAP SEVIERVILLE	
FILED	
HOUR	2:30 M
DATE: OCT 15 1992	
<i>Shawn F. Gaudin</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

NO. 5035 & 5036

MOTION

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order requiring the District Attorney General's Office for the Fourth Judicial District to set out what criteria, if any, that office uses in determining whether to seek the death penalty in a particular case. The defendant requests a hearing on this motion.

MEMORANDUM OF LAW

Pursuant to the Fourteenth Amendment of the United States Constitution and Article 1 § 8 of the Tennessee Constitution, an accused criminal in a death penalty case has the right that the death penalty will not be imposed against him or her in a discriminatory or arbitrary manner.

Respectfully submitted,

Edw. C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edw. C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

AT SEVIERVILLE	
FILED	
HOUR	2:30 M
DATE:	OCT 15 1992
<i>Shelby R. Hamblin</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	
MOTION	

NO. 5035 & 5036

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order prohibiting the defendant from being brought into any court appearance while wearing jail clothing. In support of this motion, the defendant cites the Eighth and Fourteenth Amendments to the United States Constitution. The defendant requires a hearing on this motion.

Respectfully submitted,

Edward C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edward C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

AT SEVIERVILLE	
CIRCUIT COURT	
FILED	
HOUR	2:30 P M
DATE	OCT 15 1992
<i>Andrew H. Henderson</i>	
CIRCUIT COURT CLERK	
SEVIER COUNTY, TENN.	

NO. 5035 & 5036

MOTION FOR A STRUCK SELECTION SYSTEM

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order providing that no preemptory challenges be made until all or most of all the prospective jurors have been questioned and qualified for service. The defendant requests a hearing on this motion.

Respectfully submitted,

Edward C. Miller

EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

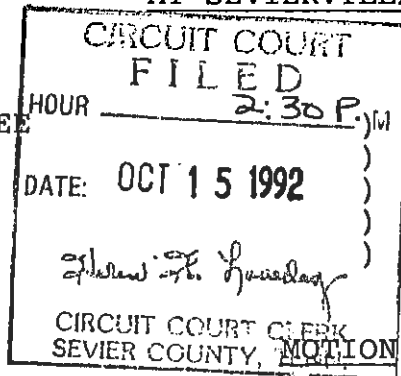
Edward C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

JAMES DELLINGER



NO. 5035 & 5036

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order requiring the prosecution to submit its complete files including any police investigative files under seal into the record in the above styled case and to further allow defense counsel an in-camera inspection of these records in order that any Brady or Giglio type evidence be produced to the defense. The defendant requests a hearing on this motion.

MEMORANDUM OF LAW

The defendant's access to any Brady or Giglio type evidence is necessary to protect the defendant's due process rights as provided by the Fourteenth Amendment of the United States Constitution and Article 1 § 8 of the Tennessee State Constitution. The defendant's access to such information is also vital to protect the defendant's right to confront witnesses against him or her pursuant to the Sixth Amendment of the United States Constitution and Article 1 § 9 of the Tennessee Constitution and of course is also necessary in order to protect the defendant against cruel and unusual punishment pursuant to the Eighth Amendment of the United States Constitution and Article 1 § 16 of the Tennessee Constitution.

Respectfully submitted,



EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edith C. Miller

Courtesy of
Time of Death Podcast
by Beth Braden

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

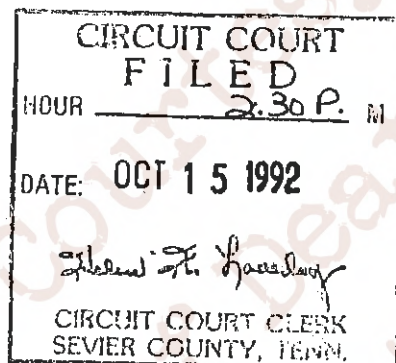
JAMES DELLINGER

)
) NO. 5035 & 5036
)
)
)

MOTION IN LIMINE

Comes the defendant, by and through counsel, and moves this Honorable Court to issue order in limine to prohibit the prosecution from introducing any evidence calculated to elicit passion and inflame the jury such as testimony from the victim's family or friends, or circumstances surrounding the death of the victim which is not particularly probative in the prosecution's attempt to prove the elements of the first degree murder or felony murder. The defendant requests a hearing on this motion.

Respectfully submitted,



Edw. C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edw. C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

AT SEVIERVILLE CIRCUIT COURT	
FILED	
HOUR	2:30 P.M.
DATE: OCT 15 1992	
<i>James H. Handley</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

NO. 5035 & 5036

MOTION TO ADOPT CO-DEFENDANT'S MOTIONS

Comes the defendant, by and through counsel and moves this Honorable Court to issue an order setting forth that each and every motion filed on behalf of the defendant, Gary Sutton, be adopted in full by the defendant. The defendant requests a hearing on this motion.

Respectfully submitted,

Edw C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edw C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

JAMES DELLINGER

NO. 5035 & 5036

MOTION FOR CHANGE OF VENUE

Comes the defendant, by and through counsel, and moves this Honorable Court as follows:

1. That the defendant alleges that the media coverage has been extensive relative to the offense with which the defendant has been charged. Attached, hereto, incorporated by reference, and made a part of hereof are the press clippings relative to this case.

2. That the defendant alleges that the statements and/or comments made to the media by the law enforcement officials and disseminated to the public at large has been highly inflammatory and prejudicial to the defendant.

3. That the defendant alleges that the prejudicial information has been so widely communicated that the defendant cannot receive a fair trial in the community and therefore a change of venue is mandated.

Respectfully submitted,

CIRCUIT COURT	
FILED	
HOUR	2:30 P. M.
DATE:	OCT 15 1992
<i>[Signature]</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

[Signature]
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

[Signature]

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

AT SEVIERVILLE FILED HOUR 2:30 PM DATE: OCT 15 1992 Circuit Court Clerk Sevier County, Tenn.

NO. 5035 & 5036

MOTION TO CHARGE PENALTIES

Comes now the defendant pursuant to Tenn. Code Ann. § 40-35-201(d) and moves the Court to charge the jury as to all possible penalties for the offenses charged and for all lesser included offenses.

Respectfully submitted,

Edw. C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 11th day of October, 1992.

Edw. C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

CLATSEVIERVILLE	
FILED	
HOUR	2:30 P. M.
DATE:	OCT 15 1992
<i>Edward C. Miller</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	
MOTION	

NO. 5035 & 5036

Comes the defendant, by and through counsel, and moves this Honorable Court for an Order permitting the defendant to discover during the voir dire whether or not potential jurors would automatically vote for the death penalty upon a finding of guilt. Defendant also requests that this examination exclude all potential jurors who would automatically vote for death upon a showing of guilt.

This motion is made pursuant of the case of Witherspoon v. Illinois, which held that the jurors can be challenged for cause if it is clear that they would automatically vote against the death penalty. The defendant contends that the same rationale should apply in the reverse and that any person who would automatically vote for the death penalty should be excluded as well.

Respectfully submitted,

Edward C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edward C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

AT SEVIERVILLE
CIRCUIT COURT
FILED
HOUR 2:30 P. M.
DATE: OCT 15 1992
J. L. H. Hensley
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.
MOTION

NO. 5035 & 5036

Comes the defendant, by and through counsel, and moves this Honorable Court to permit the defendant's attorney to individually question potential jurors regarding how many years that they suspect that the defendant would have to serve should he receive a life sentence.

1. This motion is made in light of the fact that there is substantial likelihood that jurors would speculate, based on the cases receiving widespread publicity throughout the State and in this community that life imprisonment means the defendant will be released within a few years. Therefore the defendant requests the opportunity to question the jurors as to the subject.

Respectfully submitted,

EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Evel C. Price

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

AT SEVIERVILLE	
CIRCUIT COURT	
FILED	
HOUR	2:30 P. M.
DATE: OCT 15 1992	
<i>Edward C. Miller</i>	
CIRCUIT COURT CLERK	
SEVIER COUNTY, TENN.	

NO. 5035 & 5036

Comes now the defendant, pursuant to Rule 12(b) T.R. Crim. P., and moves the Court for an Order striking the word "alias" from the indictment. Defendant requests a hearing on this motion prior to the date of trial.

Respectfully submitted,

Ed C.
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Ed C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

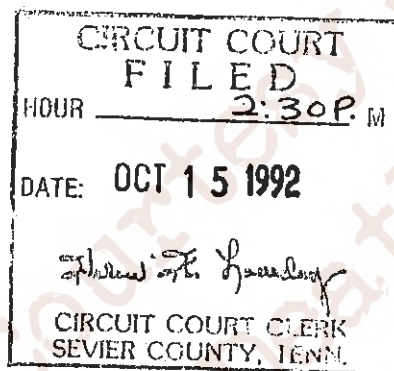
JAMES DELLINGER

)
) NO. 5035 & 5036
)
)
)

MOTION TO EXCLUDE PHOTOS

Comes the defendant, by and through counsel and moves this Honorable Court to issue an order prohibiting the State from introducing photographs that have little or no probative value due to their prejudicial effect and the possibility that they may deny the defendant his constitutional right to a fair trial.

Respectfully submitted,



Ed C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Ed C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

JAMES DELLINGER

)
) NO. 5035 & 5036
)
)
)

MOTION FOR INVESTIGATORS' NOTES

Comes the defendant, by and through counsel, and moves this Honorable Court to order the discovery of the rough notes and the handwritten notes of the investigators in the above captioned case. The defendant submits that this is proper discovery pursuant to Rule 16 of the T.R.C.P. and the interests of justice require it.

CIRCUIT COURT FILED
HOUR <u>2:30 P.</u> M
DATE: OCT 15 1992
<i>Thomas H. Gandy</i> CIRCUIT COURT CLERK SEVIER COUNTY, TENN.

Respectfully submitted,

Edw C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edw C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

JAMES DELLINGER

)
) NO. 5035 & 5036
)
)
)

MOTION IN LIMINE

Comes the defendant, by and through counsel, and moves this Court to issue an order in limine prohibiting the State from attempting to enter into evidence any "prior bad acts" of the accused as substantive evidence during the prosecution's case in chief.

CIRCUIT COURT	
FILED	
HOUR	2:30 P. M.
DATE: OCT 15 1992	
<i>Edward C. Miller</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

Respectfully submitted,

Edward C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edward C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

JAMES DELLINGER

)
) NO. 5035 & 5036
)
)
)

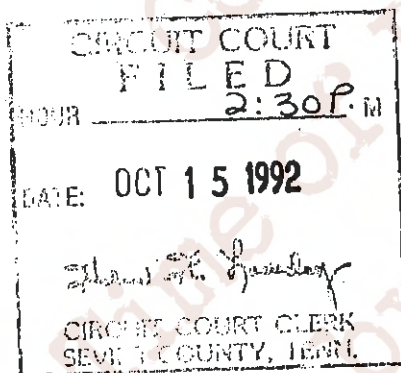
MOTION IN LIMINE

Comes the defendant, by and through counsel, and moves this Court for an order in limine prohibiting the State from introducing any evidence calculated to elicit passion and inflame the jury such as testimony from the victim's family or friends or circumstances surrounding the death of the victim, which is not particularly probative in the prosecution's attempt to prove the elements of the offenses in this cause.

MEMORANDUM OF LAW

The introduction of irrelevant evidence intended to elicit passion and inflame the jury would be in violation of the defendant's due process rights as guaranteed by the United States and Tennessee Constitutions.

Respectfully submitted,



Edward C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edward C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

JAMES DELLINGER

CIRCUIT COURT	
FILED	
HOUR	2:30 P. M.
DATE: OCT 15 1992	
<i>Edward C. Miller</i>	
CIRCUIT COURT MOTION	
SEVIER COUNTY, TENN.	

NO. 5035 & 5036

Comes the defendant, by and through counsel, and moves this Honorable Court to allow both counsel for the defendant to participate in closing arguments. This motion is made pursuant to the defendant's right to counsel as guaranteed by the Tennessee and United States Constitutions.

Respectfully submitted,

Edward C. Miller

EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 11th day of October, 1992.

Edward C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

FILED
HOUR

AT SEVIERVILLE

2:30 P.M.

DATE: OCT 15 1992

Stephen W. Housley

CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

NO. 5035 & 5036

MOTION TO COMPEL DISCLOSURE OF THE EXISTENCE AND SUBSTANCE OF
PROMISES OF IMMUNITY, LENIENCY, OR PREFERRED TREATMENT

Comes the defendant, by and through counsel, and respectfully moves this Honorable Court to order the State to disclose to him the existence and substance of any promises of immunity, leniency, or preferred treatment. Specifically, the defendant requests that the State make the following information available:

1. The existence, substance, and the manner of execution or fulfillment of any promise, statement, agreement, understanding, or arrangement, either verbal, written or implied between the State or its agents and any prosecution witness or cooperating individual, or such person's attorneys or representatives, for the purpose of obtaining said person's testimony or cooperation, or the disclosure of information by the person to the State, wherein the State or any of its agents has agreed to do or has suggested it would do any of the following:

a. Not prosecute said person for any crime or crimes or recommend that the person not be prosecuted for any past or future criminal conduct;

b. Not prosecute a third party for any crime or crimes where the reason for not prosecuting the third party is the consideration to the person;

c. Provide a formal grant of statutory immunity or to provide an informal assurance that the person will not be prosecuted in connection with any testimony, cooperation, or information given by him or her;

d. Recommend leniency or a particular sentence for any crime or crimes for which he or she stands convicted or believes might be convicted;

e. Comply with any prior agreements although said witness may have previously violated a part of his agreement;

f. Provide favorable treatment or consideration, including, but not limited to, money, a job, a new location, a new start, etc..., to the person himself or to friends or relatives of the person in return for his or her testimony, cooperation, and provision of information;

g. Make any recommendation of benefit to the person, to any state or federal agency including, but not limited to, any state or federal agency including, but not limited to, any state or federal law enforcement agency; and

h. Cooperate with any state law enforcement agency in that agency's agreement not to prosecute said person for any crime or crimes prohibited by state law; and

i. Make any other recommendation of benefit, or give any other consideration to the person or friends or relatives of said person.

2. Any cancelled check, receipt, voucher, or any other document produced as a result of any promise, statement, agreement, understanding or arrangement by which any of the above was provided to the person or by which record was kept of such by the State.

3. The substance and manner of execution of any threat of prosecution or intimidation in any way by any state agent, or other person acting on behalf of the state, to a witness, concerning the giving or not giving of any testimony, cooperation, or information in this case.

MEMORANDUM

The State, of course, has a constitutional obligation to disclose to a defendant any consideration that has been given, promised, or any way held out to a witness. Graves v. State, 489 S.W.2d 74 (Tenn. Cr. App. 1972).

In Giglio v. United States, 405 U.S. 150 (1972), the Supreme Court made plain that the prosecution's duty to disclose was an affirmative one and that ignorance of one prosecutor about the promises made to a government witness by another prosecutor does not excuse the failure to disclose. In accordance with Giglio, id., the District Attorney must make an appropriate inquiry to determine what consideration, broadly defined, has been offered to or bestowed upon its witnesses.

In addition to disclosing any promise of consideration that might promote a witness cooperation, the State must make known to the defendant any communication that might cause the witness to color his testimony in favor of the State out of fear or interest in self-preservation. Consequently, suggestions by any State agent about the witness' possible vulnerability to prosecution, parole, or probation revocation, or other sanctioned by the State must be disclosed to the defendant. See eq., United States v. Sutton, 542 F.2d 1239 (4th Cir. 1976).

The existence of any promise or suggestion by the State of favorable or harsh treatment to a witness is obviously extremely relevant to the witness credibility, and courts have made plain that failure to disclose such information violates a defendant's Fifth and Sixth Amendment rights. Giglio v. United States, supra; United States v. McCrane, 527 F.2d 906 (3rd Cir. 1975), aff'd after remand, 547 F.2d 205 (1976); Luwinski v. Ristaino, 448 F. Supp. 690 (D. Mass. 1978). To enable the defendant to prepare for trial, he respectfully requests that the motion be granted and that disclosure be made as soon as possible.

Respectfully submitted,


EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edna C. Miller

Courtesy of
Time of Death Podcast
by Beth Braden

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

JAMES DELLINGER

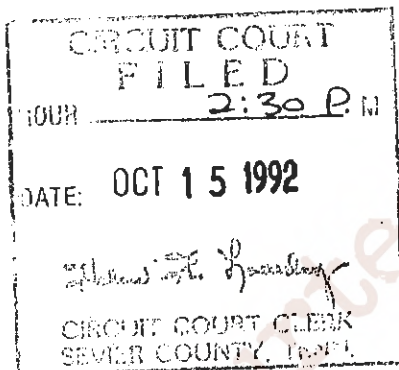
)
)
)
)
)

NO. 5035 & 5036

MOTION TO SUPPRESS

Comes now the defendant pursuant to Rule 12(b) and moves to suppress any oral or written statements which the State may seek to introduce into evidence in this case and requests a hearing on the admissibility of said statements prior to trial.

Respectfully submitted,



Edward C. Miller
EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 12th day of October, 1992.

Edward C. Miller

IN THE CRIMINAL COURT FOR GRAINGER COUNTY, TENNESSEE

AT RUTLEDGE

HOUR 2:30 PM

STATE OF TENNESSEE

DATE: OCT 15 1992

NO. 5035 & 5036

v.

JAMES DELLINGER

CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

MOTION TO DISMISS THE INDICTMENT DUE TO THE ILLEGALITY
AND UNCONSTITUTIONALITY OF TENN. CODE ANN. § 39-2-203
AND § 39-2-205 AND THE IMPOSITION OF THE SENTENCE OF DEATH

Comes now the defendant, through counsel, and moves this Court to dismiss the indictment in this cause on the ground that Tenn. Code. Ann § 39-2-203 and Tenn. Code Ann. § 39-2-205, which allow for the imposition of the sentence of death upon conviction of murder in the first degree, violate the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as Article I, §§ 8, 9, 10, 14, and 16 of the Tennessee Constitution and the Rules of Law as espoused and mandated by the United States Supreme Court for the following reasons:

1. Tenn. Code Ann. § 39-2-203(f) and (g) provides insufficient guidance to the jury concerning who has the burden of proving whether mitigation outweighs aggravation and what standard of proof the jury should use in making that determination in violation of the Eighth and Fourteenth Amendments of the United States Constitution and Article I, § 16 and 8 of the Tennessee Constitution.....3

2. Tenn. Code Ann. §39-2-203 does not sufficiently narrow the population of defendants, convicted of first degree murder, who are eligible for a sentence of death in violation of the Eighth and Fourteenth Amendments of the United States Constitution and Article I, §§ 16 and 8 of the Tennessee Constitution.....6

3. Tenn. Code Ann. § 39-2-203 does not sufficiently limit the exercise of the jury's discretion because, once the jury finds aggravation, it can impose the sentence of death no matter what mitigation is shown, in violation of the Eight and Fourteenth Amendments of the United States Constitution and Article I, §§ 16 and 8 of the Tennessee Constitution.....7

4. Tenn. Code Ann. § 39-2-203, insufficiently limits the exercise of the jury's discretion by mandatorily requiring the jury to impose a sentence of death if it finds the aggravating circumstances to outweigh the mitigating circumstances in violation of the Eighth and Fourteenth Amendments of the United States Constitution and Article I, §§ 16 and 8 of the Tennessee Constitution.....8

5. Tenn. Code Ann. § 39-2-203 allows the jury to accord too little weight to non-statutory mitigating factors and limits the jury's options to impose the sentence of life in violation of the Eighth and Fourteenth Amendments of the United States Constitution and Article I, §§ 16 and 8 of the Tennessee Constitution.....10

6. Tenn. Code Ann. § 39-2-203 does not require the jury to make the ultimate determination that death is appropriate in violation of the Eighth and Fourteenth Amendments of the United States Constitution and Article I, §§ 16 and 8 of the Tennessee Constitution.....11

7. Tenn. Code Ann. § 39-2-203 does not inform the jury of its ability to impose a life sentence out of mercy in violation of the Eighth and Fourteenth Amendments of the United States Constitution and Article I, §§ 16 and 8 of the Tennessee Constitution.....12

8. Tenn. Code Ann. § 39-2-203 provides no requirement that the jury make findings of facts as to the presence or absence of mitigating circumstances, thereby preventing effective review on appeal under Tenn. Code Ann. § 39-2-205(c) in violation of the Eighth and Fourteenth Amendments of the United States Constitution and Article I, §§ 16 and 8 of the Tennessee Constitution.....12

9. Tenn. Code Ann. 39-2-203(h) prohibits the jury from being informed of the consequences of its failure to reach a unanimous verdict in the penalty phase in violation of the Eighth and Fourteenth Amendments of the United States Constitution and Article I, §§ 16 and 8 of the Tennessee Constitution.....14

10. The imposition of the sentence of death pursuant to Tenn. Code Ann. § 39-2-203 is cruel and unusual and thus in violation of the Eighth and Fourteenth Amendments of the United States Constitution and Article I, §§ 16 and 8 of the Tennessee Constitution.....15

11. The imposition of the sentence of death pursuant to Tenn. Code Ann. § 39-2-203 by electrocution is cruel and unusual and thus in violation of the Eighth and Fourteenth Amendments of the United States Constitution and Article I, §§ 16 and 8 of the Tennessee Constitution.....16

12. The imposition of the sentence of death pursuant to Tenn. Code Ann. § 39-2-203 violates the Eighth and Fourteenth Amendments of the United States Constitution and Article I, § 16 and 8 of the Tennessee Constitution because it has been imposed discriminatorily in this state on the basis of race, sex and geographic region in the state, economic and political status of the defendant.....17

13. The proportionality and arbitrariness review conducted by the Tennessee Supreme Court pursuant to Tenn. Code Ann. 39-2-203 is inadequate and deficient in violation of the Eighth and Fourteenth Amendments of the United States Constitution and Article I, §§ 16 and 8 of the Tennessee Constitution.....18

14. Tenn. Code Ann. § 39-2-203(c) permits the introduction of relatively unreliable evidence in the state's proof of aggravation or rebuttal of mitigation and thus violates the Fifth, Eighth and Fourteenth Amendments of the United States Constitution and Article I, §§ 9, 16 and 8 of the Tennessee Constitution.....26

15. Tenn. Code Ann. § 39-2-203(d) allows the state to make final closing arguments to the jury in the penalty phase in violation of the defendant's right to due process of law and effective assistance of counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 8 and 9 of the Tennessee Constitution.....28

Respectfully submitted,

Ed C. Miller

EDWARD C. MILEER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Grainger County, Tennessee.

This the 12th day of October, 1992.

Ed C. Miller

IN THE CRIMINAL COURT OF SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE

FILED
HOUR 2:30 M

STATE OF TENNESSEE

DATE: OCT 15 1992)

NO. 5035 & 5036

v.

JAMES DELLINGER

Shelby L. Hensley

CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

MOTION TO ALLOW JURY QUESTIONNAIRE

Comes the defendant, by and through counsel, and moves this Honorable Court to issue an order for all prospective jurors to complete a questionnaire, a copy of which is attached hereto. As grounds for this motion, the defendant would show to the Court that completion of such a questionnaire before voir dire would result in a great savings of time and tax dollars. The defendant also submits that the defendant's right to access to such information is guaranteed by the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution and Article 1 §§ 8, 9, and 16 of the Tennessee Constitution. The defendant requests a hearing on this motion.

Respectfully submitted,

Edward C. Miller

EDWARD C. MILLER
Public Defender
4th Judicial District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee.

This the 17th day of October, 1992.

Ed C. Miller

JUROR Questionnaire

A. Background Information

1. NAME _____
2. ADDRESS _____

3. PHONE NUMBER _____ MILES _____
4. EMPLOYER _____
5. JOB TITLE _____
6. NAME OF SPOUSE _____
7. SPOUSE'S EMPLOYER _____
8. SPOUSE'S JOB TITLE _____

Have you ever served on a CRIMINAL JURY? YES _____ NO _____

If so, when and where? _____

9. Please give the following information as to each of your children:

CHILD NO. 1 SEX _____ AGE _____ OCCUPATION _____

PRESENT PLACE OF RESIDENCE _____

CHILD NO. 2 SEX _____ AGE _____ OCCUPATION _____

PRESENT PLACE OF RESIDENCE _____

CHILD NO. 3 SEX _____ AGE _____ OCCUPATION _____

PRESENT PLACE OF RESIDENCE _____

CHILD NO. 4 SEX _____ AGE _____ OCCUPATION _____

PRESENT PLACE OF RESIDENCE _____

CHILD NO. 5 SEX _____ AGE _____ OCCUPATION _____

PRESENT PLACE OF RESIDENCE _____

B. Social Relationships

10. Are you a member of a local church, temple or other religious organization? What is its name and location?

11. What activities, if any, are you involved with at present for your church, temple or religious organization? Have you ever studied for the ministry or held similar church responsibilities?

12. What civic clubs, societies, professional associations or other organizations are you a member of?

13. What offices are you holding, or have you held in the past, in these organizations?

14. What are your hobbies, favorite recreations or pastimes?

C. Education/Experience

15. How far were you able to get in school?

16. If you attended college, what was your:

(a) Major subject _____

(b) Minor subject _____

(c) What college _____

(d) Did you graduate from college? _____

17. If you were in the service:

(a) What branch _____

(b) Did you volunteer or enlist? _____ (c) Re-enlist? _____

(d) Highest rank or grade attained _____

(f) Were you in combat? _____

D. Civic Activities

18. Have you ever held or sought political office? _____

(a) What office held? _____ (b) When? _____

(c) What office sought? _____ (d) When? _____

19. Have you, your spouse or any member of your family ever been a member or employee of a law enforcement organization; for example: a City, County, State or local police officer, constable, deputy sheriff, ranger, Tennessee Department of Safety Officer, etc.

(a) YES _____ NO _____

(b) If YES, please state the following:

What position(s)? _____

Date(s) held? _____

20. Have you, your spouse or any member of your family ever been a member of an auxiliary or police reserve law enforcement branch such as auxiliary deputy sheriff, constable, or sheriff's posse?

(a) YES _____ NO _____

(b) If YES, please state the following:

What position(s)? _____

What department(s)? _____

Date(s) held? _____

21. Have you, your spouse or any member of your family applied for a job in law enforcement, but subsequently decided not to take the job?

(a) YES _____ NO _____

(b) If YES, please state what law enforcement position was applied for?

(c) Approximate date of the application? _____

22. Have you, your spouse or any member of your family ever worked as a secretary, clerk, filing assistant, dispatcher or back-up employee of any law enforcement agency?

(a) YES _____ NO _____

(b) If YES, please give details including name of the agency, specific tasks performed, and dates of employment.

23. Have you, your spouse or any family member ever worked in a prison, jail or detention center of any sort?

(a) YES _____ NO _____

(b) Position(s) held? _____

(c) Name of institution(s)? _____

(d) Date(s) held? _____

24. Have you, your spouse or any family member ever worked in a security guard, detective service or polygraph agency?

(a) YES _____ NO _____

(b) Position(s) held? _____

(c) Name of the institution(s)? _____

(d) Type(s) of institution? _____

(e) Date(s) held? _____

25. Do you have any friends who are employed in law enforcement?

(a) YES _____ NO _____

(b) If YES, please state the name of those friends and the law enforcement agency by which they are employed.

26. Have you, your spouse or any family member ever been in any way connected with the District Attorney's Office of this or any other county?

(a) YES _____ NO _____

(b) If YES, please state the following:

Position(s) held? _____

What county(ies)? _____ Date(s) Held? _____

27. Have you, your spouse or any family member ever had occasion to contact the District Attorney's Office on any hot checks, complaints, or miscellaneous matters?

(a) YES _____ NO _____

(b) If YES, give details _____

28. Have you or your spouse ever studied law, or had someone in your family or a close friend who studied law?

(a) YES _____ NO _____

(b) If YES, give details _____

29. Have you ever had an unpleasant experience involving law enforcement? If so, please explain:

E. Residence/Occupation

30. Where have you lived besides your present county location? List residence and general time spent in other counties and/or states?

31. Other than you and your spouse's present occupations, what other types of jobs have you and your spouse held?

F. Crime

32. Have you ever been interested in a specific criminal case in this county? If so, what case and what was your interest? (Interest could be stimulated through newspapers, TV, or other media.)

27. Have you, your spouse or any family member ever had occasion to use the services of the District Attorney's Office on any hot checks, complaints, or miscellaneous matters?

(a) YES _____ NO _____

(b) If YES, give details _____

28. Have you or your spouse ever studied law, or had someone in your family or a close friend who studied law?

(a) YES _____ NO _____

(b) If YES, give details _____

29. Have you ever had an unpleasant experience involving law enforcement? If so, please explain:

E. Residence/Occupation

30. Where have you lived besides your present county location? List residence and general time spent in other counties and/or states?

31. Other than you and your spouse's present occupations, what other types of jobs have you and your spouse held?

F. Crime

32. Have you ever been interested in a specific criminal case in this county? If so, what case and what was your interest? (Interest could be stimulated through the newspapers, TV, or other media.)

33. Have you ever been a victim of a crime? If YES, please explain.

34. Have you ever been a witness in a criminal case? If so, explain. (This includes whether you testified in court or not and also please indicate whether you were a witness for the prosecution or for the defense.)

Courtesy of
Time of Death Podcast
by Beth Braden

CIRCUIT COURT	
LED	
HOUR	12:00 P.M.
DATE: OCT 16 1992	
<i>Shawn F. Hensley</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENNESSEE	

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE	*	
PLAINTIFF	*	
VS.	*	NO. 5033, 5034
GARY W. SUTTON	*	
DEFENDANT	*	

MOTION TO SUPPRESS STATEMENTS

COMES THE DEFENDANT, Gary Wayne Sutton, by and through counsel, and says:

1. That on February 25, 1992 and February 28, 1992 this Defendant was interrogated by Detective Jim Widner and Detective Dale Gourley of the Blount County Sheriff's Department at the Sevier County Sheriff's Department in Sevierville, Sevier County, Tennessee.

2. On each of the above mentioned occasions this Defendant gave a statement which was recorded, transcribed but never signed by this Defendant. The authorities had focused on this Defendant as a suspect. At no time before these interrogations was this Defendant advised of his Constitutional rights which was in violation of Miranda vs. Arizona.

3. On February 28, 1992 at approximately 9:30 a.m. the Defendant's attorney, David W. Webb, received a telephone call which advised the Defendant's attorney that the Defendant was going to return to the Sevier County Sheriff's Department to talk with the investigators. Defendant's attorney, David W. Webb, immediately called Detective Jeff McCarter, of the Sevier County Sheriff's Department and advised this Detective that David W. Webb represented the Defendant, Gary Wayne Sutton, and that no one should take any statement from this Defendant without the presence of counsel. Detective McCarter acknowledged this demand and

288

advised he would pass the information to the other investigators.

4. On February 28, 1992 at approximately 11:45 a.m. the Defendant, while giving a statement asked to call his attorney, David W. Webb. The officers stopped the interview and allowed the Defendant to call his attorney.

5. At approximately 12:00 p.m. (noon) the Defendant's attorney, David W. Webb, along with co-counsel, James W. Greenlee, appeared at the Sevier County Sheriff's Department for the purpose of consulting with their client, this Defendant.

6. After consulting with their client, counsel for this Defendant advised the investigators that this Defendant would not be giving any further statements and admonished the investigators not to attempt to interrogate this Defendant any further. The investigators acknowledged that they would not interrogate this Defendant any further. The investigators did say they were going to photograph and fingerprint this Defendant and counsel did not object.

7. Several hours later this Defendant was released from custody.

8. This Defendant was arrested on March 5, 1992 and has been incarcerated since that date.

9. On March 5, 1992 at approximately 1:40 p.m. this Defendant was read his Constitutional rights and signed an Admonition and Waiver. At approximately 3:30 p.m. on the same date, this Defendant, while in the process of being booked, was confronted by Detective Jeff McCarter and was told "to do some soul searching about this incident". In response, this Defendant gave an oral statement. Before giving this statement the Defendant was not re-advised of his Constitutional rights pursuant to Miranda vs. Arizona. Furthermore, this Detective knew that this Defendant was represented by counsel.

10. On March 9, 1992 an alleged statement was taken by David Davenport of the Tennessee Bureau of Investigation. Defendant denies that he requested an interview and denies that he initiated the appearance of David Davenport or any other officer. Defendant avers that David Davenport did come to the Sevier County Sheriff's Department and try to pressure this Defendant into giving a statement. This Defendant told David Davenport that he would not give any further statement without his attorney present. Defendant avers that David Davenport then became upset and began to curse, threaten and vilify this Defendant. Defendant avers David Davenport then left.

11. Defendant avers that this agent knew that this Defendant was represented by counsel as reflected on the agent's statement and the Admonition and Waiver. There was no tape recording of the alleged statement so as to accurately reflect what occurred. All that exists is this agent's handwritten statement which was not signed by this Defendant and the Admonition and Waiver which likewise was not signed by this Defendant.

12. There is a critical admission purportedly made by the Defendant in these oral statements that he did not nor would not make in the taped and transcribed statements.

13. In the oral statements the Defendant allegedly said that he had been with a co-defendant, James Dellinger, "all" the time during the time these crimes were supposed to have occurred. This is the only possible connection the State has between this Defendant and the crimes.

14. The oral statement made to TBI Agent David Davenport was accompanied by a Rights Waiver, wherein Agent Davenport wrote that Gary Sutton specifically waived his right to an attorney. This Waiver is not signed, having been refused by the Defendant.

15. The absence of a signature, the Defendant's refusal

to sign the Waiver, constitutes exactly that..a refusal to waive his right to the presence of an attorney during the making of the statement.

16. If a Defendant in custody or in custodial interrogation, fails to waive his right to have an attorney present in addition to his other rights as guaranteed by Miranda vs. Arizona, it is not permitted that he be allowed to be questioned.

17. Despite his failure to waive these rights, questions were asked, answers were given, the substance of which the Defendant denies he made.

18. This is a capital murder case and as such the procedures employed by the police to gather evidence must protect the rights of the accused in a scrupulous fashion. This the police have failed to do. They have reduced a critical item of evidence to a "swearing contest" between a supposedly honorable Detective and a supposedly dishonorable Defendant.

19. The United States and State of Tennessee Constitutions, as well as standard police procedures, have been adopted and are in force in order to eliminate those situations which come down to a "swearing contest" between a defendant and the authorities about critical issues. The only corroboration in this record which supports the Defendant's position is an unsigned Rights Waiver with written additions proposing that the Defendant waive his right to have an attorney present during questioning. All too often a signed Rights Waiver is used to corroborate the State's witnesses' testimony that a statement was constitutionally given; it is likewise fair and appropriate that an unsigned Waiver corroborate the Defendant's refusal to waive those rights.

PREMISES CONSIDERED, Defendant requests that a hearing

be held and at the conclusion of said hearing that any statements he may have given authorities be suppressed for the following reasons:

1. Considering the totality of the circumstances the statements were not freely nor voluntarily given;

2. The tape recorded statements were taken without this Defendant being advised of his Constitutional rights in violation of Miranda vs. Arizona.

3. The statement given Detective McCarter was given by virtue of mental coercion and without timely advisement to this Defendant of his Constitutional rights in violation of Miranda vs. Arizona;

4. The statements of February 28, 1992, March 5, 1992 and March 9, 1992 were obtained in violation of the Defendant's privilege against self-incrimination and the Defendant's right to counsel, both guaranteed by the Tennessee and the United States Constitutions.

5. The interrogating officers knew that this Defendant was represented by counsel but never-the-less initiated a custodial interrogation of this Defendant without notifying Defendant's counsel thus violating this Defendant's Constitutional rights.

6. For relief Defendant cites the right against self-incrimination contained in the Fifth Amendment to the United States Constitution and Article §9 of the Tennessee Constitution; the right to due process contained in the Fifth Amendment to the United States Constitution and Article §8 of the Tennessee Constitution; the right to counsel contained in the Sixth Amendment to the United States Constitution and Article §9 of the Tennessee Constitution; the Eighth Amendment to the United States Constitution and Article §16 of the Tennessee Constitution prohibiting cruel and unusual punishment as well as the "Due Process" clause of the Fourteenth Amendment to the United

States Constitution and Article §8 of the Tennessee
Constitution.

RESPECTFULLY SUBMITTED:

THIS THE 15 DAY OF October, 1992.

GARY WAYNE SUTTON, DEFENDANT

BY: David W. Webb James W. Greenlee
DAVID W. WEBB JAMES W. GREENLEE
ATTORNEYS FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this
date sent a true and exact copy of the foregoing Motion to
the State of Tennessee, District Attorney General, Third
Floor, County Courthouse, Sevierville, TN. 37862 and to Mr.
Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN.
37725-0416 by Hand Delivery.

THIS the 15 day of October, 1992.

David W. Webb
DAVID W. WEBB, ATTORNEY

oct92\b\sut-sup.mot

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE
STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT	
FILED	
HOUR	10:15 A. M.
DATE: OCT 20 1992	
NO. 5033, 5034	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

MOTION FOR CHANGE OF VENUE

COMES THE DEFENDANT, Gary Sutton, by and through counsel and moves this Honorable Court in the following particulars:

1. The Defendant alleges that the media coverage, press as well as video, has been extensive relative to the offense for which the Defendant has been charged. Attached hereto, incorporated herein by reference, and made a part hereof are the press clippings relative to this case.

2. The newspaper articles describe the alleged crime and this Defendant's alleged involvement. Some of the description of the is crime contains hearsay and other evidence, the admissibility of which has not yet been ruled upon by this Court.

3. The Defendant alleges that the statements and/or comments made to the media by law enforcement officials and State witness(es) and disseminated to the public at large have been highly inflammatory and prejudicial to the Defendant.

4. The alleged victim has many friends and a large family in Sevier County, Tennessee who have made statements and comments to members of the public to inflame and prejudice the public against this Defendant.

5. The Defendant alleges that the prejudicial information has been so widely communicated in this community the Defendant cannot receive a fair trial in this community, and therefore, a change of venue is mandated.

6. The Defendant will attach to this Motion before

hearing and incorporates herein by reference, the affidavits of Sevier County citizens, who express the opinion that the Defendant cannot receive a fair trial in this community.

WHEREFORE, PREMISES CONSIDERED, Defendant Prays that a decision on the merits of this Motion be made prior to trial since in all probability, it will be impossible to secure a venire from Sevier County that would not have knowledge of this case. To wait until the voir dire of the jury panel on the day this case is set for trial would be to delay this trial until much later and deny the Defendant the right to a speedy trial, which is guaranteed by both federal and state constitutions.

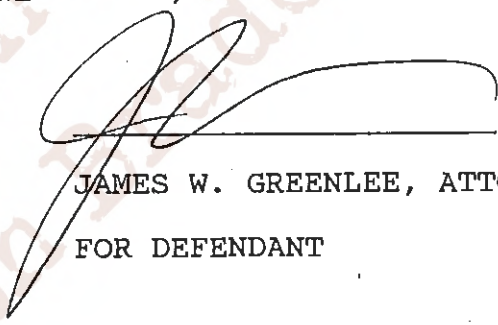
RESPECTFULLY SUBMITTED:

THIS the 20th day of October, 1992.

GARY WAYNE SUTTON, DEFENDANT

BY: 

DAVID W. WEBB, ATTORNEY
FOR DEFENDANT


JAMES W. GREENLEE, ATTORNEY
FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller, Public Defender, P.O. Box 416, Dandridge, TN. 37725-0416 by U.S. Mail.

THIS the 20th day of October, 1992.


DAVID W. WEBB, ATTORNEY

oct92\b\sut-ch.ven

294

Quint

Thursday, June 18, 1992

Sevierville softball league: Sports, Page 6A

THE MOUNTAIN PRESS

35¢

Vol. 2-92, No. 170 • 10 Pages

Blount can't seek execution for brother's death

By LESLIE WILSON
Staff Writer

The district attorney general in Maryville said he will work with Sevier County's district attorney general to try to get two Sevier County men sent to the electric chair.

Blount County District Attorney General Mike Flynn said Wednesday he will not seek the death penalty against Gary Wayne Sutton, 28, of Kodak and his uncle, James A. Dellinger, 41, of Seymour in connection with the February slaying of Tommy Griffin, 24. Griffin was shot in the

back of a head with a shotgun.

"Unfortunately, we don't have any of the enhancing factors that apply," Blount County District Attorney General Mike Flynn said. "Al (Sevier County District Attorney General Al Schmutzer Jr.) and I are just going to have to work together and try to get the same results in Sevier County."

Griffin, formerly of Bluff Heights Road in Sevier County, was found dead Feb. 24 near Little River off U.S. 321 in Walland.

Sutton and Dellinger were charged with first-degree murder in connection with the slaying and are also charged with murder in the slaying of Griffin's sister, Connie

Branam, 34, whose badly burned body was discovered in the burned-out shell of her car in Wears Valley Feb. 28.

Schmutzer said in May he will seek the death penalty in the Sevier County case. Authorities said they believe the two killed Branam as part of an attempt to hide Griffin's death.

The pair also faces two counts of arson each in Sevier County in connection with the blaze that destroyed Griffin's trailer Feb. 21 and the burning of Branam's car.

There are 12 enhancing factors the state takes into consideration when a murder case is presented. If none of the 12 factors are present, prosecutors cannot ask for

the death penalty.

"If any of (the enhancing factors) were present, we would be seeking the death penalty," Flynn said.

The death penalty was an automatic penalty in murder convictions in this state until the late 1970s, when that law ruled unconstitutional. First-degree murder convictions are now punishable by life in prison or the death penalty. The sentence must now be determined by a jury in a separate hearing.

Sutton and Dellinger are scheduled for arraignment in Blount County Criminal Court Aug. 11 and have a Sept. 21 trial date.