

IV. 03C01-9403-CR-00090

STATE OF TENNESSEE

VS.

GARY WAYNE SUTTON

AND

JAMES ANDERSON DELLINGER

SEVIER NO. 90

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY WAYNE SUTTON

DEFENDANT

CIRCUIT COURT	
FILED	
HOUR	* 3:20 P. M.
DATE: FEB 17 1993	NO. 5033, 5034
* Shawn R. Housley CIRCUIT COURT CLERK SEVIER COUNTY, TENNESSEE	

COMES THE DEFENDANT, Gary W. Sutton, by and through counsel, and moves this Honorable Court to bind the State of Tennessee to certain representations and enter an Order to that effect and in support says:

1. That on November 20, 1992 a pre-trial Motion hearing was held.

2. The Court, on page 30 of the transcribed hearing, asks the State the following question:

"THE COURT: Let me ask you this. Of course, one of the statements in this case contradicts the other in regards to a vehicle.

GENERAL SCHMUTZER:

THE COURT: Okay. So how does that affect the State's position?

GENERAL SCHMUTZER: Your Honor, the State does not even intend to prove that. We would not even attempt to introduce that, number one. But number two, I don't think it would affect this position because it still doesn't, other than contradicting each other, does not directly implicate each other. The explain that anyway by saying, "Well, we're in so many cars, I thought we were in the other car." We don't put that much--you know, I think one of them said that during that evening, they were in the truck, and the other one said they were in the car. So the State would not attempt to show that.

THE COURT: Okay."

3. The Defendant avers that by this representation the State has made an election not to prove this apparent contradiction. From that date, the Defense has relied on that statement made by the State. To allow the State to change its position now would unduly prejudice this Defendant and would violate his constitutional rights to due process guaranteed him, along with his other constitutional rights, under the United States and State of Tennessee Constitutions.

RESPECTFULLY SUBMITTED:

THIS the 16 day of Feb, 1993.

GARY W. SUTTON, DEFENDANT

BY: David Webb

DAVID W. WEBB, ATTORNEY

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 16 day of Feb, 1992.

David Webb

DAVID W. WEBB, ATTORNEY

feb93\b\sut-cntr.lim

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

PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

CIRCUIT COURT	
FILED	
HOUR	3:20 p. M
DATE: FEB 17 1993	
NO. 5033, 5034	
<i>William F. Garrison</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

MOTION IN LIMINIE

COMES THE DEFENDANT, Gary Sutton, by and through counsel, and moves this Court to prevent the State from introducing particular evidence in this cause and under no circumstances attempt to introduce same without first approaching the Court and giving all Parties a jury-out hearing. The Defendant makes reference to a quantity of zinc that was found in the left shoulder of Connie Branam. None of the State's experts can opinion that this zinc had any connection with her death and to introduce it without any causal connection would be highly and unfairly prejudicial to this Defendant and would deprive them of their due process rights guaranteed them under the State of Tennessee and United States Constitutions.

Respectfully submitted this the 16 day of Feb, 1993.

GARY W. SUTTON, DEFENDANT

BY:

David W. Webb

ZANE DANIEL, 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 by Hand Delivery.

THIS the 16 day of Feb, 1993.

David W. Webb
DAVID W. WEBB, ATTORNEY

feb93\b\sut-zinc.mot

397

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT FILED	
HOUR	3:20 PM
DATE: FEB 17 1993	NO. 5033, 5034
<i>Alvin M. Hensley</i> CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

MOTION TO SUPPRESS

COMES the Defendant, Gary W. Sutton, by and through counsel, and moves this Court to Suppress the items taken from the property or home of James Dillinger and would join any Motion by Co-Defendant James Dillinger in suppression of this evidence, and in support of said Motion will show as follows:

1. That the Defendant, Gary W. Sutton, is presently being tried jointly with the Co-Defendant James Dillinger.

2. That certain items of property, intended to be used by evidence by the State in this cause, was taken from the property of James Dillinger and is to be used against the Defendant Gary W. Sutton and the State may allege that this property is the property or connected with Gary W. Sutton.

3. Therefore, the Defendant moves the Court to Suppress this evidence in so much as the Search Warrant for the search of this property was obtained through Fraud as is shown by the record in this cause.

RESPECTFULLY submitted this the 16 day of February, 1993.

GARY W. SUTTON, DEFENDANT

BY: *David W. Webb*

ZANE DANIEL, DAVID W. WEBB

CO-ATTORNEYS FOR DEFENDANT

ATTORNEYS CERTIFICATE

I, ZANE DANIEL, Attorney, do certify that I have this date sent a true and exact copy of the foregoing MOTION TO SUPPRESS to the State of Tennessee, District Attorney General, Third Floor, County Courthouse, Sevierville, Tn. 37862 by hand delivery.

THIS the 16 day of February, 1993.


ZANE DANIEL, DAVID W. WEBB
ATTORNEYS FOR DEFENDANT SUTTON

b:b\7\21\92 sutton.sup

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

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NO. 5033, 5034

CIRCUIT COURT FILED	
HOUR	3:20 P M
DATE: FEB 17 1993	
<i>James H. Garrison</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

MOTION IN LIMINIE

COMES THE DEFENDANT, Gary Sutton, by and through counsel, and moves this Court to compel the State to provide Jenks material at the beginning of the trial in order to save time and so as not to inconvenience the Court or the Jury due to delays it would take at the end of each witness' testimony to review the Jenks material.

Respectfully submitted this the 17 day of FEBRUARY, 1993.

GARY W. SUTTON, DEFENDANT

BY: *David W. Webb*

ZANE DANIEL, 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 by Hand Delivery.

THIS the 17 day of February, 1993.

David W. Webb
DAVID W. WEBB, ATTORNEY

feb93\b\sut-jenk.mot

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IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

*

PLAINTIFF

VS.

JAMES DELLINGER

DEFENDANT

CIRCUIT COURT	
FILED	
HOUR. <u>10:15 A.</u>	NO. <u>5035, 5036</u>
DATE: <u>FEB 18 1993</u>	
<i>Shawn A. Gourley</i>	
CIRCUIT CLERK SEVIER COUNTY, TENN.	

COMES THE DEFENDANT, James Dellinger, by and through counsel and moves this Honorable Court to suppress the statement allegedly made by him on February 25, 1992; February 28, 1992. In the alternative, to require the State to omit certain portions of these statements and not present these portions to the Jury; and in support of said Motion would show as follows:

1. Defendant gave a recorded to Officers Dale Gourley and James Widener on February 25, 1992 and again on February 28, 1992. These statements were tape recorded and a transcript has been furnished to counsel for Defendant.

2. Counsel would show that this transcript has illegible portions and inaccuracies in the transcript and if the State intends to use any statements from this Defendant that they play the tapes which are the best evidence of the alleged statements.

3. That in so much as certain sections of the tape and accompanying transcript are prejudicial, hearsay, opinions, untruths and statements made by the officers rather than the Defendant, the Defendant moves this Court to require the State to omit those sections of the tape and that those sections not be played in the presence of or heard by the Jury.

4. The Defendant would move for the following sections to be omitted regarding the tape of February 25, 1992:

BEGINNING on page 2 at the line, "JW: Which car was you driving?" and concluding on page 3 at the line(s), "JD: It's dark. Dark colored. ... car at the time."

5. Regarding a tape recording of February 28, 1992 the following portions Defendant alleges should be excluded are as follows:

BEGINNING at page 7 and concluding at the end of page 10 in the entirety.

BEGINNING on page 11 at its top line and concluding with the line, "W: YOU THREE WERE THERE"

BEGINNING on page 16 at the line, "W. O.K., AT ELEVEN FIFTY-FIVE FRIDAY NIGHT,....ITS HARD TO EXPLAIN. ISN'T IT?" and concluding on page 18 with the line, "W: WELL, SEE, EVERYBODY....TO MUCH OF A FIGHTER"

BEGINNING on page 18 at line "W: ONLY THING...TODAY THAT" and concluding on page 19 with the line, "G: THATS ALL HE DRANK...SHE SAID TO HIM"

BEGINNING on page 20 at line, "W: AND FROM THE BAR... PEOPLE ARE FIGHTING" and concluding on page 45 in its entirety.

6. The foregoing transcripts as herein referred to contain inaccuracies and Defendant moves that if the State elects to use any statements made by Defendant, that the State should be ordered to play the actual tape rather than referring to the inaccurate transcripts which is the interpretation and impression of some third party and amounts to hearsay.

7. The filing of the foregoing is submitted for the Court's convenience in order that a ruling be made in this matter and not presented to the Court without this Court first making such a ruling. This is filed in the form of a Motion in Liminie.

RESPECTFULLY SUBMITTED:

THIS the 18th day of February, 1993.

JAMES DELLINGER

BY: Edward C. Miller

E.MILLER, ATTORNEY FOR DEFENDANT

ATTORNEY'S CERTIFICATE

I, ED MILLER, 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 Hand Delivery.

THIS the 18th day of February, 1993.

Ed Miller
ED MILLED, S.LAWS, ATTORNEYS
FOR DEFENDANT

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

PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

CIRCUIT COURT FILED	
HOUR _____	* NO 5033, 5034
DATE: FEB 18* 1993	
<i>Theresa L. Gourley</i> MOTION CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

COMES THE DEFENDANT, Gary Wayne Sutton, by and through counsel and moves this Honorable Court to suppress the statement allegedly made by him on February 25, 1992; February 28, 1992 and March 9, 1992. In the alternative, to require the State to omit certain portions of these statements and not present these portions to the Jury; and in support of said Motion would show as follows:

1. Defendant gave a recorded to Officers Dale Gourley and James Widener on February 25, 1992 and again on February 28, 1992. These statements were tape recorded and a transcript has been furnished to counsel for Defendant.

2. Counsel would show that this transcript has illegible portions and inaccuracies in the transcript and if the State intends to use any statements from this Defendant, that they play the tapes which are the best evidence of the alleged statements.

3. That in so much as certain sections of the tape and accompanying transcript are prejudicial, hearsay, opinions, untruths and statements made by the officers rather than the Defendant, the Defendant moves this Court to require the State to omit those sections of the tape and that those sections not be played in the presence of or heard by the Jury.

4. The Defendant would move for the following sections to be omitted regarding the tape of February 25, 1992:

BEING, on page 8 at line: "or not. Maybe he did go in and use the bathroom. I don't remember, anyway we met there at the truck, you know, and got to talking about

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the truck, but ah...But you know, I.." and;

the lines: "GS: A white Dodge truck. A white truck. or 83....." and concluding: "....my uncle's"

BEING page 18, line(s): "...I counted five out there, you know, on the hood of the truck, and I was counting through my ones,..."

BEING page 24, line(s): "...just remember we got in the truck and he walked on back to..."

BEING page 25, line(s): "GS: Poor ole Tommy, he really [to page 26] He was. He really was. (Unintelligible)." and;

BEING page 26, line(s): "GS: No. They, they didn't shutout of the trunk. He..."

BEING page 43, line(s): "DG: Then here Tommy's..... up to something."

5. Regarding a tape recording of February 28, 1992 the following portions Defendant alleges should be excluded are as follows:

BEING page 3, line(s): "G: WE KNOW HOW LONG... [to page 4]...WE'VE DRIVING YOUR COMARO"

BEING page 4, line: "G: DIDN'T YOU'NS COVER FROM START TO FINISH?"

BEING page 5, line(s): "W: FIRST WE STARTED OUT.....[to page 6] ..YOU DROVE ON FRIDAY?"

BEING page 7, line(s): "W: OUT THERE AT ELEVEN HE HAD SOME SCUFF MARKS ON HIM" and;

page 7, line(s): "W: WELL YOU HAVE, [to page 8] ...OFFICER A SPECK OF TROUBLE." and;

page 8, line(s): "W: THEN, WAIT A MINUTE,.....TELLING ME THAT"

BEING page 9, line(s): "W: NO, YOU'VE TOLD, ...TOLD ME ALL OF IT"

6. The foregoing transcripts as herein referred to contain inaccuracies and Defendant moves that if the State elects to use any statements made by Defendant, that the State should be ordered to play the actual tape rather than referring to the inaccurate transcripts which is the interpretation and impression of some third party and amounts to hearsay.

7. The filing of the foregoing is submitted for the Court's convenience in order that a ruling be made in this

matter and not presented to the Court without this Court first making such a ruling. This is filed in the form of a Motion in Limine.

RESPECTFULLY SUBMITTED:

THIS the 17 day of Feb, 1993.

GARY WAYNE SUTTON

BY:

David W. Webb

Z.DANIEL, D.WEBB, 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 Hand Delivery.

THIS the 17 day of Feb, 1993.

David W. Webb
DAVID W. WEBB, ATTORNEY

feb93\b\sut-sup.tap

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

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MOTION

NO. 5033, 5034

CIRCUIT COURT	
FILED	
HOUR	11:15 A.
DATE: FEB 18 1993	
Helen H. Loredan	
CIRCUIT COURT CLERK	
SEVIER COUNTY, TENN.	

COMES THE DEFENDANT, Gary Wayne Sutton, by and through counsel of record and moves this Court for an Order allowing Defendant to call as an expert witness for defense, a person with specific and definitive knowledge of ballistics; to qualify this person for testimony on behalf of Defendant as to an examination by this person of certain objects, shells, and materials; and to enter his testimony as pursuant to an expert witness in view of certain statements made by the State in Voir Dire.

Respectfully submitted this the 18 day of Feb., 1993. GARY W. SUTTON, DEFENDANT

BY: Zane Daniel

ZANE DANIEL, 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 by Hand Delivery.

THIS the 18 day of Feb., 1993.

David W. Webb
DAVID W. WEBB, ATTORNEY

feb93\b\sut-expt.mot

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IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT FILED	
HOUR _____	M _____
DATE: FEB 18 1993 NO. 5033, 5034	
<i>Theresa L. Gaudin</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

MOTION IN LIMINE

COMES THE DEFENDANT, Gary Sutton, by and through counsel, moves to enter an Order suppressing the statements made for the grounds previously raised in a previous pre-trial Motion hearing; or in the alternative, moves that the State be prohibited from introducing these statements in their case-in-chief for reasons previously set forth; or in the alternative, should the Court allow the State to introduce these statements in their case-in-chief, that the Court at a jury-out hearing review these statements and redact or extract from those statements any argument from police officers, any statements of police officers regarding their theory of this case, any statements of police officers that are immaterial to this cause, for instance wherein the police officers threaten one or more of these Defendants with the electric chair, etc., and any statements and answers that are inaudible in whole or in part.

Respectfully submitted this the 16 day of Feb, 1993. GARY W. SUTTON, DEFENDANT

BY: *David W. Webb*

ZANE DANIEL, 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 by Hand Delivery.

THIS the 16 day of Feb, 1993.

David W. Webb
DAVID W. WEBB, ATTORNEY

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407

[Handwritten signature]

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

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

FILED
HOUR 5:00 P. M.
DATE: FEB 18, 1993 NO. 5033, 5034
<i>Stephen F. Housley</i>
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.

MOTION IN LIMINIE

COMES THE DEFENDANT, Gary Sutton, by and through counsel, and moves this Honorable Court to disqualify William M. Bass, State Forensic Anthropologist, from testifying that this type of burn did not result from Connie Branam's smoking and dropping a cigarette in the car. Dr. Bass informed the State of Tennessee who provided discovery to defense counsel by his supplementary letter of September 11, 1992 that he was going to give this opinion. The reason counsel for defense that Dr. William M. Bass, is a State Forensic Anthropologist and is not qualified as an arson investigator to give said opinion.

Defendant moves that the Court not to ask that question to Dr. Bass until a jury-out hearing is held for this Court to determine whether or not Dr. Bass is qualified.

Respectfully submitted this the 18 day of Feb, 1993.

GARY W. SUTTON, DEFENDANT

BY: *David W. Webb*

ZANE DANIEL, DAVID W. WEBB, 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 by Hand Delivery.

THIS the 18 day of Feb, 1993.

David W. Webb
DAVID W. WEBB, ATTORNEY

feb\93\sut-bass.mot

408

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

PLAINTIFF

VS.

GARY WAYNE SUTTON

DEFENDANT

CIRCUIT COURT	
FILED	
HOUR <u>4:00</u>	NO. <u>5033</u> , 5034
DATE: FEB 18 1993	
<i>David W. Webb</i>	
CIRCUIT CLERK	
SEVIER COUNTY, TENN.	

COMES THE DEFENDANT, Gary W. Sutton, by and through his counsel of record, and moves this Honorable Court to order the District Attorney General, his assistants and agents, and all prosecution witnesses, to absolutely refrain from making any mention, either direct or indirect, to any alleged statements made by the victim, Tommy Griffin, at the time when he was allegedly put out of the car on Hunt Road or when he was first confronted by law enforcement officers.

Defendant alleges that said statement, if made, is not relevant to any issues in this trial, is the rankest form of hearsay and is highly prejudicial. Such evidence is clearly inadmissible and to allow such would constitute a denial of due process, equal protection, and will make it legally impossible for this Defendant to obtain a fair and impartial trial. The interest of justice dictates that said Order been given in this cause to protect the Defendant's constitutional rights afforded by the United States of America and State of Tennessee Constitutions.

RESPECTFULLY SUBMITTED:

THIS the 16 day of Feb, 1993.

GARY WAYNE SUTTON, DEFENDANT

BY: *David W. Webb*

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 in Liminie to the Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 by Hand Delivery.

THIS the 16 day of Feb, 1993.

David W. Webb
DAVID W. WEBB, ATTORNEY

feb93\b\sut-mot.st

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

PLAINTIFF
VS.
GARY W. SUTTON
DEFENDANT

CIRCUIT COURT
FILED
HOUR _____ * NO. M 5033, 5034
DATE: FEB 18* 1993
MOTION
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

COMES THE DEFENDANT, Gary Wayne Sutton, by and through counsel and moves this Honorable Court to suppress the statement allegedly made by him on February 25, 1992; February 28, 1992 and March 9, 1992. In the alternative, to require the State to omit certain portions of these statements and not present these portions to the Jury; and in support of said Motion would show as follows:

1. Defendant gave a recorded to Officers Dale Gourley and James Widener on February 25, 1992 and again on February 28, 1992. These statements were tape recorded and a transcript has been furnished to counsel for Defendant.

2. Counsel would show that this transcript has illegible portions and inaccuracies in the transcript and if the State intends to use any statements from this Defendant that they play the tapes which are the best evidence of the alleged statements.

3. That in so much as certain sections of the tape and accompanying transcript are prejudicial, hearsay, opinions, untruths and statements made by the officers rather than the Defendant, the Defendant moves this Court to require the State to omit those sections of the tape and that those sections not be played in the presence of or heard by the Jury.

4. The Defendant would move for the following sections to be omitted regarding the tape of February 25, 1992:

BEING, on page 8 at line: "or not. Maybe he did go in and use the bathroom. I don't remember, anyway we met there at the truck, you know, and got to talking about

the truck, but ah...But you know, I..." and;

the lines: "GS: A white Dodge truck. A white truck. or 83....." and concluding: "....my uncle's"

BEING page 18, line(s): "...I counted five out there, you know, on the hood of the truck, and I was counting through my ones..."

BEING page 24, line(s): "...just remember we got in the truck and he walked on back to..."

BEING page 25, line(s): "GS: Poor ole Tommy, he really [to page 26] He was. He really was. (Unintelligible)." and;

BEING page 26, line(s): "GS: No. They, they didn't shutout of the trunk. He..."

BEING page 43, line(s): "DG: Then here Tommy's..... up to something."

5. Regarding a tape recording of February 28, 1992 the following portions Defendant alleges should be excluded are as follows:

BEING page 3, line(s): "G: WE KNOW HOW LONG... [to page 4]...WE'VE DRIVING YOUR COMARO"

BEING page 4, line: "G: DIDN'T YOU'NS COVER FROM START TO FINISH?"

BEING page 5, line(s): "W: FIRST WE STARTED OUT.....[to page 6] ..YOU DROVE ON FRIDAY?"

BEING page 7, line(s): "W: OUT THERE AT ELEVEN HE HAD SOME SCUFF MARKS ON HIM" and;

page 7, line(s): "W: WELL YOU HAVE, [to page 8] ...OFFICER A SPECK OF TROUBLE." and;

page 8, line(s): "W: THEN, WAIT A MINUTE,.....TELLING ME THAT"

BEING page 9, line(s): "W: NO, YOU'VE TOLD, ...TOLD ME ALL OF IT"

6. The foregoing transcripts as herein referred to contain inaccuracies and Defendant moves that if the State elects to use any statements made by Defendant, that the State should be ordered to play the actual tape rather than referring to the inaccurate transcripts which is the interpretation and impression of some third party and amounts to hearsay.

7. The filing of the foregoing is submitted for the Court's convenience in order that a ruling be made in this

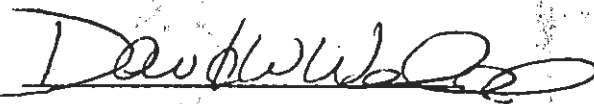
matter and not presented to the Court without this Court first making such a ruling. This is filed in the form of a Motion in Limine.

RESPECTFULLY SUBMITTED:

THIS the 17 day of Feb, 1993.

GARY WAYNE SUTTON

BY:

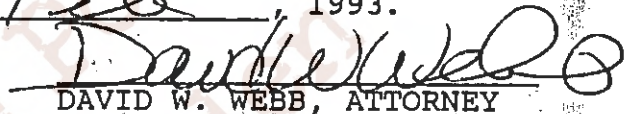


Z.DANIEL, D.WEBB, ATTORNEYS FOR DEFENDANT

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 Hand Delivery.

THIS the 17 day of Feb, 1993.



DAVID W. WEBB, ATTORNEY

feb93\b\sut-sup.tap

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE *FILED February 19, 1993, 9:15 A.M.*
PLAINTIFF *9:15 A.M.* *K. P. R. Clerk*

VS. DATE: FEB 19 1993 NO. 5033, 5034

GARY W. SUTTON
DEFENDANT

David W. Webb
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

~~MOTION IN LIMINE~~

COMES THE DEFENDANT, Gary Sutton, by counsel, and moves this Honorable Court to preclude the State from admitting certain hearsay and irrelevant matters pertaining to the statement of John D. Brown provided Defense by the State on February 18, 1993. Defendant requests a jury-out hearing before the State be allowed to ask any questions regarding the following statement, "Mr. Dellinger further stated, (Gary Sutton had been in a fight with one of the Griffin boys) and one of them done the shooting."

Respectfully submitted this the 19 day of Feb, 1993.

GARY W. SUTTON, DEFENDANT

BY: David W. Webb

ZANE DANIEL, DAVID W. WEBB, 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 by Hand Delivery.

THIS the 19 day of Feb, 1993.

David W. Webb
DAVID W. WEBB, ATTORNEY

feb93\b\sut-sht.mot

413

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE * *Filed February 19, 1993, 9:30 a.m.*

PLAINTIFF *Richard Webb*

VS. *Richard Webb*

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT
FILED
HOUR *9:15 A.* M. NO. 5033, 5034
DATE: FEB 19 1993
Richard W. Webb
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

COMES THE DEFENDANT, Gary Sutton, by counsel, and moves this Honorable Court to preclude the State from admitting the statements of Officers Steven Brooks and Drew Roberts of the Alcoa Police Department of Blount County, Tennessee. In support of this Motion in Liminie, the Defendant, through counsel, would show that certain statements were given to counsel for Defendants on the afternoon of Thursday, February 18, 1993 at approximately 5:00 p.m. These statements contain irrelevant, immaterial, prejudicial, hearsay, incompetent statements and conclusions on the part of the Declarants/Officers.

Defendant would further show that certain statements were made by the Officers pertaining to an arrest of Tommy Griffin which occurred on February 21, 1992 in Blount County, Tennessee.

Defendant would move that certain statements regarding information which was received from a dispatch call which was relayed a dispatcher and again relayed to these Officers would be incompetent.

The Defendant would attach hereto two (2) copies of the witness' statement which was furnished to Defense counsel and would ask the Court to rule on these matters, out of the presence of the jury, before allowing these statements to be presented to the jury.

For the Court's convenience a copy of said statements is attached hereto which contain the topics which are prejudicial, inflammatory and incompetent for the reasons

heretofore stated.

This Motion is filed jointly by counsel for Gary W. Sutton and James Dellinger in order that they not be duplicated but Defendants, by counsel, moves the Court to treat this Motion separately as if filed by each Defendant. Respectfully submitted this the 19 day of Feb., 1993.

GARY W. SUTTON, DEFENDANT

JAMES DELLINGER, DEFENDANT

BY: Zane Daniel

ZANE DANIEL, DAVID W. WEBB, ATTORNEYS

FOR DEFENDANT SUTTON

BY: Edward C. Miller

ED MILLER, SUZANNE LAWS, ATTORNEYS

FOR DEFENDANT DELLINGER

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 by Hand Delivery.

THIS the 19 day of Feb., 1993.

David Webb
DAVID W. WEBB, ATTORNEY

feb93\b\sut-off.mot



SPECIFIC DATA

SENTENCE REPORT

IDENTIFYING DATA

Name (Last, First, Middle) AKA

SUTTON, Gary Wayne

Judge Honorable
Rex Henry OgleCourt
Sevier County CircuitRegion
East TennesseeDefense Attorney
David W. Webb Ret'd

District Attorney ADAG

Green/Schmutzer

Address

535 Vicksburg Lane
Kodak, TNDocket Number
5033, 5034

Sentencing Hearing Date

Date of Conviction

County
Sevier

Date Referred

3/5/92

Report Due

2/16/93

Prepared By/Date

Lisa Ball 2/1/93

Age	D.O.B.	Sex	Race	Ht.	Wt.	Eyes	Hair
27	2/24/65	Male	White	5'10"	175	Blue	Brown

Social Security Number

409-27-4845

FBI Number

706 129 AA7

Marital Status

Married

FBI Sheet Attached

Yes

No
XX

OFFENSE

Offense/Date Occurred

Presentment: 2/92 1st Degree
Murder, Arson, Arson

Date When Arrested, by Whom and Where Arrested (County)

3/5/92
Sevier County Sheriff's Department
Sevier County, Tennessee

Present Location of Defendant

Bond _____ In Custody XX

Since

Amount _____ Time In Jail 3/5/92

Sentence Imposed

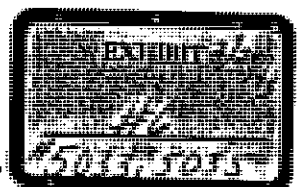
Disposition

OFFICIAL VERSION

WNC

CONFIDENTIAL

CIRCUIT COURT FILED	
HOUR	8:30 P. M.
DATE: FEB 24 1993	
Helen L. Housley	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	



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Re: Sutton, Gary Wayne
Page 2

ENHANCING FACTORS:

No enhancing factors were filed by the Attorney General in this case, according to the court's records, however a Notice to Seek the Death Penalty has been filed.

MITIGATING FACTORS:

No mitigating factors were filed by the defense attorney in this case, according to the court's records; nor were any discovered by this officer during the course of this investigation.

PRIOR RECORD:

Date	Offense	Court	Date/Disposition
4/27/92	1st Degree Murder	Blount County Circuit	Pending
3/5/92	1st Degree Murder, Arson (2 cts)	Sevier County Circuit	Instant Offense
1/8/92	7 cts Reckless Endangerment	Sevier County Trial Justice	2/21/92 Dismissed
*1/7/92	Aggravated Assault		2/3/92 No True Bill
11/30/91	DUI	Sevier County Trial Justice	No disposition
7/18/91	Assault & Battery	Sevier County Trial Justice	8/16/91 Fines & Costs, 6 mos. susp. to 7 days, 6 mos. probation, Restraining Order
7/18/91	Vandalism	Sevier County Trial Justice	8/16/91 Fines & Costs, 30 days susp. to payment of 1/3 restitution for damages, 30 days probation
8/29/90	Public Intoxication	Sevier County Trial Justice	8/29/90 Fine & costs, \$110.50
12/14/89	Speeding	Sevier County Trial Justice	1/11/90 Fine & costs, \$5.00
12/14/89	Cancelled License	Sevier County Trial Justice	1/11/90 Dismissed
9/1/89	Aggravated Assault	Sevier County Trial Justice	9/19/89 Fines & costs, 11/29 susp., 11/29 probation
8/28/89	Driving on Cancelled License	Sevier County Trial Justice	Dismissed

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Re: Sutton, Gary Wayne
Page 3

PRIOR RECORD: Continued

Date	Offense	Court	Date/Disposition
8/25/89	Aggravated Assault	Sevier County Trial Justice	2/2/90 Dismissed
8/14/89	Breach of Peace, Threaten an Officer	Sevier County Trial Justice	2/13/90 Fined \$5, 30 days susp. to time served; 6 mos. probation
8/14/89	DUI	Sevier County Trial Justice	2/13/90 Fined \$5, 30 days susp. to time served, 6 mos probation, reduced to Public Drunkenness
8/14/89	Revoked License	Sevier County Trial Justice	Dismissed
*4/5/89	Larceny	Sevier County Trial Justice	4/13/89 Charge amended to Criminal Trespass, Advise 60 days, mutual restraining order
*6/28/88	Felonious Assault	Sevier County Trial Justice	7/19/88 Charge amended to Assault & Battery w/below stipulations
6/27/88	Assault & Battery	Sevier County Trial Justice	7/19/88 Advisement 90 days, mutual restraining order all parties; costs to defendant
7/23/87	Driving on Susp. License	Sevier County Trial Justice	9/15/87 Fined \$5 & costs, Changed to No Driver's License
12/10/86	Disobeying Red Light	Sevier County Trial Justice	12/18/86 Fined \$5, pled guilty
12/10/86	Driving on Susp. License	Sevier County Trial Justice	2/5/87 Fined \$5, changed to No Driver's License
8/4/86	Larceny After Trust	Sevier County Trial Justice	9/2/86 Fined \$5, 30 days susp, 6 mos probation
8/4/86	Destruction of Private Property	Sevier County Trial Justice	9/2/86 Fined \$5, 30 days susp, 6 mos. probation restitution of \$100

Re: Sutton, Gary Wayne
Page 4

PRIOR RECORD: Continued

Date	Offense	Court	Date/Disposition
7/11/86	Felonious Assault	Sevier County Trial Justice	7/24/86 Dismissed, 30 days to pay costs
5/13/86	Felonous Assault Grand Larceny Destruction Private Property	Sevier County Trial Justice	5/20/86 Charges dropped
6/24/83	Destruction Private Property	Sevier County Trial Justice	6/24/83 Served 21 days
1/12/83	Aggravated Assault	Court Unknown Marietta, GA	2/4/83 - 5 yrs, serve 1 year; 4 yrs probation 3/31/83 rel. time served
1/12/83	Operating Vehicle w/o License	Court Unknown Marietta, GA	2/4/83 \$75.00 fine
1/12/83	Bad Checks	Court Unknown Marietta, GA	2/4/83 Dismissed

Criminal Reputation: The defendant is known to local law enforcement officers.

Juvenile: Not checked due to age of defendant.

NCIC: See Prior Record (*)

EDUCATION:

The defendant reported completing the 8th grade in 1973 or 1974 at Sevierville Middle School in Sevier County.

RESIDENCE:

The defendant reported residing at his current address for the last 7 years. He is a life long resident of Sevier County except for several years when he lived in Georgia. He is currently in the Sevier County Jail.

EMPLOYMENT:

The defendant reported working last as a carpenter for Goodin Homes since 1988. However he is currently unemployed due to being incarcerated.

Re: Sutton, Gary
Page 5

OTHER INFORMATION DEEMED IMPORTANT:

The defendant is not eligible for probation.

SOURCES OF INFORMATION:

Sevier County Sheriff's Department
Sevier County Circuit Court Clerk
Sevier County Trial Justice Clerk
NCIC
Defendant: Gary Sutton
Blount County Records Check
Cobb County, GA Sheriff's Department
Cobb County, GA Superior Court
Cobb Co. GA Sessions Court

lb/mzh

CIRCUIT COURT FILED	
HOUR	8:30 P. M.
DATE: FEB 24 1993	
CLERK OF COURT SEVIER COUNTY, TENN.	

IN THE CIRCUIT COURT FOR Sevier County, TENNESSEE,

AT Sevierville SEVIER COUNTY, TENN.

STATE OF TENNESSEE

vs Gary Wayne Sutton
James Anderson Dellinger

NO. 5033 ; 5035

CHARGE: 1st Degree
Murder, 2nd Degree
Murder, Burning of
Personal Property

LADIES AND GENTLEMEN OF THE JURY:

This is a criminal case. The Indictment is an official accusation only. It is not evidence against the defendant and raises no inference of guilt. The defendant says he is not guilty of any offense charged or included in the indictment. He is presumed innocent. The burden of proof is on the state. The standard of proof is beyond a reasonable doubt. The state must prove that the offense occurred in this county, that the defendant before the Court is the party responsible, and that all of the elements constituting the criminal offense occurred as alleged. You are the judges of the law and the facts, the law as given you by the Court and the facts as given you by the witnesses, and ultimately, the guilt or innocence of the defendant.

During your deliberations, the Court reminds you to reason together as your verdict, whether "guilty" or "not guilty", must be unanimous.

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These instructions set forth the legal principles raised by the evidence. Consider each instruction in connection with all other instructions and in the light of the proof. Singular words may be taken equally to mean the plural. Words of gender may mean either he or she as the case may be.

Statements, arguments, and remarks of counsel are intended to help the Court and to help you in understanding the evidence and applying the law, but such are not evidence. You will look to the witnesses for the facts and to the Court for the law.

(See insert law on principal charges and any lesser included offenses)

The Court will not relate to you the theory of the prosecution or the defense but will rely instead upon the arguments of counsel.

Courtesy of
Time of Death Podcast
by Beth Braden

Whether a crime has been committed and the identity of the person responsible are all questions for you.

The law presumes the defendant is innocent of the charges against him, and the defendant is not required to prove his innocence. On the contrary the burden of proof is always on the state. The state must prove every element of the offense to your satisfaction beyond a reasonable doubt. A reasonable doubt is an honest doubt which remains after investigation of all of the evidence which will not permit the mind to rest easily as to the certainty of guilt. A reasonable doubt does not include a captious, possible, or an imaginary doubt. Absolute certainty of guilt is not required to convict but moral certainty is required, and this certainty extends to every element necessary to constitute the offense.

You must look to the evidence given you from the witness stand alone in determining the facts of the case. In this connection you will consider all of the evidence, both direct and circumstantial, together with such inferences or presumptions as may be justified by the proof. You will also consider any admission, stipulation, or exhibit admitted into evidence. Lay aside unimportant, immaterial, or insignificant evidence or issues that have no bearing on guilt or innocence.

You are the exclusive judges of the facts and the credibility of the witnesses. Everyday of your lives you have judged people,

their reliability, their truthfulness, and the accuracy of their statements. In the case now on trial you will apply that same knowledge and experience in finding the truth from the evidence presented to you. In determining the facts you will of course look to the intelligence and respectability of the witnesses, their impartiality or bias, their means of knowledge, the reasonableness of their statements, their conduct on the witness stand, and all of the evidence in the case tending to support or to contradict them. A witness may be impeached, that is the reliability of the testimony may be put in doubt by showing inconsistent, contradictory, unreasonable, or improbable statements on this or other occasions regarding the evidence given. You alone determine the trustworthiness of the evidence and the weight and value it should receive.

DIRECT AND CIRCUMSTANTIAL

The guilt of the defendant as well as any fact required to be proved may be established by direct evidence, by circumstantial evidence, or by both combined.

Direct evidence is defined as evidence which proves the existence of the fact in issue without

inference or presumption. Direct evidence may consist of testimony of a person who has perceived by the means of his or her senses the existence of a fact sought to be proved or disproved.

Circumstantial evidence consists of proof of collateral facts and circumstances which do not directly prove the fact in issue but from which that fact may be logically inferred.

When the evidence is made up entirely of circumstantial evidence, then before you would be justified in finding the defendant guilty, you must find that all the essential facts are consistent with the hypothesis of guilt, as that is to be compared with all the facts proved; the facts must exclude every other reasonable theory or hypothesis except that of guilt; and the facts must establish such a certainty of guilt of the defendant as to convince the mind beyond a reasonable doubt that the defendant is the one who committed the offense. [It is not necessary that each particular fact should be proved beyond a reasonable doubt if enough facts are proved to satisfy the jury beyond a reasonable doubt of all the facts necessary to constitute the crime charged. Before a verdict of guilty is justified, the circumstances, taken together, must be of a conclusive nature and tendency, leading on the whole to a satisfactory conclusion and producing in effect a moral certainty that the defendant, and no one else, committed the offense.

FAILURE TO TESTIFY

De/tinge

The defendant did not testify. His failure to testify may not be considered as an admission of guilt, as evidence against him, or that the charges could not be answered, for he is presumed innocent and is not required to prove his innocence.

DEFENDANT TESTIFIED

Sutton

Since the defendant testified, you will judge his evidence just as you do that of the other witnesses in the case.

VERDICT FORM
MULTIPLE DEFENDANTS

As to the charge of
First Degree
Murder

YOU MUST CONSIDER THE CHARGES AS TO EACH DEFENDANT.
YOU WILL REPORT A VERDICT AS TO EACH DEFENDANT.

CONSIDER FIRST, THE CHARGE OF First Degree Murder

IF YOU CONVICT, REPORT.

IF NOT SATISFIED AS TO GUILT, CONSIDER THE CHARGE OF 2nd
Degree Murder

IF YOU CONVICT, REPORT.

IF NOT SATISFIED AS TO GUILT, CONSIDER THE CHARGE OF

If you find a defendant guilty, name the defendant, name the offense and report. If you are not satisfied as to a defendant's guilt beyond a reasonable doubt, your verdict will be not guilty as to him or them.

CONSOLIDATED INDICTMENTS

You are trying two separate cases which have been consolidated for trial [REDACTED]. The first indictment, number [REDACTED], charges the defendant ^{Dellinger} with the offense of First Degree Murder and Burning of Personal Property. The second indictment, number [REDACTED], charges the defendant ^{Sutton} with the offense of First Degree Murder and Burning of Personal Property.

[REDACTED]

All [REDACTED] indictments will be given to you together with this charge when you begin your deliberation. Reference is made to these indictments for a more perfect description of the particular offense.

T.P.I. -- CRIM. 7.01

HOMICIDE: FIRST DEGREE MURDER (PREMEDITATED KILLING)

Any person who commits the offense of first degree murder is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

(1) that the defendant unlawfully killed the alleged victim; and

(2) that the killing was intentional. A person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result;² and

(3) that the killing was deliberate. A deliberate act is one performed with cool purpose;³ and

(4) that the killing was premeditated.

A premeditated act is one done after the exercise of reflection and judgment.⁴ Premeditation means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill preexist in the mind of the

T.P.I.--CRIM. 37.11

CAUSE OF DEATH

Before the defendant can be convicted of any degree of homicide, the state must have proven beyond a reasonable doubt that the death of the deceased, Lonnie Brown, was brought about as a result of the criminal agency of the defendant; that is, that the death of the deceased was due to the unlawful act of the defendant.¹

One who unlawfully inflicts a dangerous wound upon another is held for the consequences flowing from such injury, whether the sequence be direct or through the operation of intermediate agencies dependent upon and arising out of the original cause.²

To convict the defendant it is not necessary that his act or failure to act be the sole cause, not the most immediate cause, of death. It is only necessary that the defendant unlawfully contributed to the death of the deceased.³

When a wound from which death might ensue is inflicted with intent to kill, you may infer that death following that wound was caused by such wound. If you so infer, the defendant should show that death resulted from some other cause not attributable to the defendant.⁴ However, the burden of proof never shifts and is always upon the state to prove beyond a reasonable doubt that the death of the deceased was brought about by the unlawful act of the defendant.

accused for any definite period of time. It is sufficient that it preceded the act as long as it was the result of reflection and judgment. The mental state of the accused at the time he allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation. If the design to kill was formed with deliberation and premeditation, it is immaterial that the accused may have been in a state of passion or excitement when the design was carried into effect. Furthermore, premeditation can be found if the decision to kill is first formed during the heat of passion, but the accused commits the act after the passion has subsided.⁵

If you find from the proof beyond a reasonable doubt that the defendant is guilty of murder in the first degree, you will so report your verdict in that event shall be "We, the Jury, find the defendant guilty of murder in the first degree".

If you so find, then it shall be your duty after a separate sentencing hearing to determine whether the defendant will be sentenced to death or life in prison, but you will not consider punishment for this offense at this time.

The punishment for the offense is life imprisonment or death by electrocution.

[REDACTED]

[REDACTED]

[REDACTED]

HOMICIDE: SECOND DEGREE MURDER

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

(1) that the defendant unlawfully killed the alleged victim; and

(2) that the killing was knowing.]

[illegible]

[The requirement of "knowing" is also established if it is shown that the defendant acted intentionally.]³

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

["Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.]⁶ ["Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.]⁷

If you find that the defendant's acts, if any, did not unlawfully cause or contribute to the death of the deceased, or if you have a reasonable doubt as to this proposition, then you must acquit him.

FOOTNOTES

1. McCord v. State, 198 Tenn. 226, 278 S.W.2d 689 (1955).
2. Odeneal v. State, 128 Tenn. 60, 157 S.W. 419 (1913).
3. Letner v. State, 156 Tenn. 68, 299 S.W. 1049 (1927).
4. McCord v. State, 198 Tenn. 226, 278 S.W.2d 689 (1955); Bean v. State, 187 Tenn. 107, 213 S.W.2d 23 (1948); Northern v. State, 541 S.W.2d 956 (Tenn. Crim. App. 1976). The trial judge should also charge T.P.I. - Crim. 37.19 - Presumptions or Inferences.
5. ~~_____~~ if applicable. Letner v. State, 156 Tenn. 68, 299 S.W. 1049 (1927).
6. ~~_____~~ Gray v. State, 194 Tenn. 234, 250 S.W.2d 86 (1952); Odeneal v. State, 128 Tenn. 60, 157 S.W. 419 (1913).

The State is not required to prove the exact method or cause of death but must show beyond a reasonable doubt that death was the result of some criminal agency. This can be established by circumstantial evidence but cannot be established by an inference drawn from a presumption or a presumption based on a presumption.



T.P.I.--CRIM. 37.19

PRESUMPTIONS OR INFERENCES

The court has charged the jury concerning [REDACTED] [an] [REDACTED] [inference] that the jury may make in regard to certain evidence in this case. However, the jury is not required to make this [REDACTED] [inference]. It is the exclusive province of the jury to determine whether the facts and circumstances shown by all the evidence in the case warrant the [REDACTED] [inference] which the law permits the jury to draw.¹ The [REDACTED] [inference] may be rebutted by direct or circumstantial evidence or both, whether it exists in the evidence of the state or is offered by the defendant.² Although the defendant is not required by law to do so, when the defendant offers an explanation to rebut the [REDACTED] [inference] raised, you should consider such explanation along with all the evidence to determine not only the correctness of the [REDACTED] [inference], but also the reasonableness of the defendant's explanation.³ You are not bound to accept either the [REDACTED] [inference] or the defendant's explanation. The state must prove beyond a reasonable doubt every element of the offense before the defendant can be found guilty.⁴

Finally, it is not your duty to please the prosecutor, the defendant, the attorneys, interested parties, or the Court. To attempt to satisfy any of them would be a violation of your oath. Your sole purpose will be to do justice according to your conscience and the oaths you have taken. In so doing you will not only honorably discharge your duty and serve the cause of justice, but you will renew again the faith and confidence of all impartial citizens in justice under the law.

You must bring to bear upon the consideration of the facts of this case your best judgment, and experience, and reason, and common sense. You must be fair. You must be impartial. You must fearlessly do your duty without sympathy or prejudice.

If this defendant is guilty, name the offense and convict him. If you have a reasonable doubt as to guilt, your verdict will be not guilty.

T.P.I. -- CRIM.7.03

**HOMICIDE: FIXING PUNISHMENT OF DEATH
OR LIFE IMPRISONMENT**

Ladies and Gentlemen of the Jury, you have now found the defendant guilty beyond a reasonable doubt of murder in the first degree as charged in the _____ count of indictment number _____.

It is now your duty to determine, within the limits prescribed by law, the penalty which shall be imposed as punishment for this offense. Tennessee law provides that a person convicted of murder in the first degree shall be punished by death or by imprisonment for life.

In arriving at this determination, you are authorized to weigh and consider any mitigating circumstances and any of the statutory aggravating circumstances which may have been raised by the evidence throughout the entire course of this trial, including the guilt-finding phase or sentencing phase or both. The jury is the sole judge of the facts, and of the law as it applies to the facts in the case. In arriving at your verdict, you are to consider the law in connection with the facts; but the Court is the proper source from which you are to get the law. In other words, you are the judges of the law as well as the facts under the direction of the Court.

The burden of proof is upon the State to prove any statutory aggravating circumstance or circumstances beyond a reasonable doubt and to a moral certainty.

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Reasonable doubt is that doubt engendered by an investigation of all the proof in the case and an inability, after such investigation, to let the mind rest easily upon the certainty of your verdict. Reasonable doubt does not mean a doubt that may arise from possibility. Absolute certainty is not demanded by the law, but moral certainty is required and this certainty is required as to every proposition of proof requisite to constitute the verdict. The law makes you, the jury, the sole and exclusive judges of the credibility of the witnesses and the weight to be given to the evidence.

STATUTORY AGGRAVATING CIRCUMSTANCES

Tennessee law provides that no death penalty shall be imposed by a jury but upon a unanimous finding that the State has proven beyond a reasonable doubt the existence of one or more of the statutory aggravating circumstances, which shall be limited to the following:

The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another.]

Members of the jury, the court has read to you the aggravating circumstances which the law requires you to consider if you find beyond a reasonable doubt that the evidence was established. You shall not take account of any other facts or circumstances as the basis for deciding whether the death penalty would be appropriate punishment in this case.

(R6/91)

MITIGATING CIRCUMSTANCES

Tennessee law provides that in arriving at the punishment, the jury shall consider as heretofore indicated, any mitigating circumstances which shall include, but are not limited to, the following:

[(1) The defendant has no significant history of prior criminal activity. (Conviction of the crime of _____ is not an aggravating circumstance to be considered in determining the penalty, but a conviction of that crime may be considered in determining whether or not the defendant has a significant history of prior criminal activity.)]

[(2) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.]

[(3) _____]

[(4) _____]

[(5) The defendant was an accomplice in the murder committed by another person and the defendant's participation was relatively minor.]

[(6) The defendant acted under extreme duress or under the substantial domination of another person.]

[(7) The youth or advanced age of the defendant at the time of the crime.]

[(8) The capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was substantially impaired as a result of mental disease or defect or intoxication which was insufficient to establish a defense to the crime but which substantially affected his judgment.]

(9) Any other mitigating factor which is raised by the evidence produced by either the prosecution or defense at either the guilt or sentencing hearing; that is, you shall consider any aspect of the defendant's character or record, or any aspect of the circumstances of the offense favorable to the defendant which is supported by the evidence.¹

No distinction shall be made between mitigating circumstances one through eight and those otherwise raised by

the evidence which are specifically requested by either the state or defense.²

The defendant does not have a burden of proving a mitigating circumstance. If there is some evidence that a mitigating circumstance exists, then the burden of proof is upon the State to prove, beyond a reasonable doubt, that mitigating circumstance does not exist.

There is no requirement of jury unanimity as to any particular mitigating circumstance, or that you agree on the same mitigating circumstance.

FOOTNOTES

1. Note that mitigating circumstance (9) must be charged in every case. It is a compilation of U.S. Supreme Court cases.
2. Tenn. Code Ann. § 39-13-204(e).

VERDICT - LIFE IMPRISONMENT

If you unanimously determine that no statutory aggravating circumstance has been proved by the State beyond a reasonable doubt; or if the jury unanimously determines that a statutory aggravating circumstance or circumstances have been proved by the State beyond a reasonable doubt but that said statutory aggravating circumstance or circumstances have not been proven by the State to outweigh any mitigating circumstances, beyond a reasonable doubt, the sentence shall be life imprisonment. You will write your verdict upon the enclosed form attached hereto and made a part of this charge.

The verdict should be as follows:

We, the jury, unanimously find that the punishment shall be life imprisonment.

PUNISHMENT OF LIFE IMPRISONMENT

We, the jury, unanimously find that the punishment shall be life imprisonment.

JURY FOREPERSON

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

DATE

VERDICT - DEATH

If you unanimously determine that at least one statutory aggravating circumstance [REDACTED] [REDACTED] have been proven by the State, beyond a reasonable doubt, and said circumstance [REDACTED] have been proven by the State to outweigh any mitigating circumstance or circumstances, beyond a reasonable doubt the sentence shall be death. The jury shall reduce to writing the statutory aggravating circumstance [REDACTED] [REDACTED] so found, and signify that the State has proven beyond a reasonable doubt that the statutory aggravating circumstance [REDACTED] outweigh any mitigating circumstances.

You will write your findings and verdict upon the enclosed form attached hereto and made a part of this charge. Your verdict shall be as follows:

- (1) We, the jury, unanimously find the following listed statutory aggravating circumstance [REDACTED] [REDACTED]
- (2) We, the jury, unanimously find that the State has proven beyond a reasonable doubt that the statutory aggravating circumstance [REDACTED] [REDACTED] so listed above outweigh any mitigating circumstances.
- (3) Therefore, we, the jury, unanimously find that the punishment shall be death.

The verdict must be unanimous and signed by each juror.

Take the case, consider all the evidence fairly and impartially, complete one of the two (2) forms, and report your verdict to the court.

JUDGE

DATE

PENALTY SET BY COURT
SPECIFIC PENALTY RANGE

On your verdict of not guilty the Court will dismiss the charges. On your verdict of guilty the Court will determine the appropriate punishment after an additional hearing.

The punishment for 1st Degree Murder
a felony, is either life in the penitentiary or death

The punishment for 2nd Degree Murder
a felony, may be a term of years not less than 15 years nor more than 25 years in the state penitentiary.

The punishment for Burning of Personal Property
a felony, may be a term of years not less than 1 years nor more than 2 years in the state penitentiary.

VERDICT FORM -
CONSOLIDATED CASES

In considering ~~the~~ cell cases, it is your duty to carefully weigh the evidence as it applies to each case. If there be evidence that sheds light upon the guilt or innocence in one case but is immaterial or irrelevant as to others, be certain that you do not permit the evidence to receive any consideration or have any bearing on your verdict in cases to which it cannot apply - In other words, consider each indictment or count within an indictment separately and consider only that portion of the evidence that bears on that precise charge - Do not let your verdict of guilt or innocence on any single charge affect your verdict as to the other charges. Your judgment must be independently made as to each charge and each count of each charge.

This indictment contains several charges called counts. You will report a separate verdict on each charge or count. You may convict the defendant on all counts; or you may acquit the defendant on all counts; or you may convict on one or more and acquit him on others, as the law and the evidence justifies.

VERDICT FORM LESSER INCLUDED OFFENSES

^{one of}
While the indictment contains the principal charge of
First Degree Murder

by implication of law it also includes the lesser offense of
2nd Degree Murder

_____. You will consider the
principal offense first. It is for your determination what
offense, if any, has been committed. When you reach a unanimous
verdict, you will report that verdict.

VERDICT FORM
MULTIPLE DEFENDANTS

You should give separate consideration to each defendant. Each is entitled to have his case decided on the law and the evidence which is applicable to him. Any evidence which was limited to one defendant should not be considered by you as to any other defendant. In other words you must confine your attention to that evidence which bears on the guilt or innocence of a particular defendant on a particular charge.

You may convict the two or more defendants of different grades of the same offense.

So therefore, after carefully considering all of the evidence as it applies to each defendant, you may convict all or you may acquit all, or you may convict one or more and acquit the others.

T.P.I.--CRIM. 37.05

EVIDENCE OF OTHER CRIMES

If from the proof you find that the defendant has committed [a crime] [crimes] other than that for which he is on trial, you may not consider such evidence to prove his disposition to commit such a crime as that on trial.¹

This evidence may only be considered by you for the limited purpose of determining whether it provides:

- (a) [the complete story of the crime; that is, such evidence may be considered by you where the prior crime[s] and the present alleged crime are logically related or connected, or are part of the same transaction, so that proof of the other tends, or is necessary, to prove the one charged, or is necessary for a complete account thereof.]²
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- (d) [motive; that is, such evidence may be considered by you if it tends to show a motive of the defendant for the commission of the offense presently charged.]⁵
- (e) [the defendant's intent; that is, such evidence may be considered by you if it tends to establish that the defendant actually intended to commit the crime with which he is presently charged.]⁶
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Such evidence of other crime[s], if considered by you for any purpose, must not be considered for any purpose other than that specifically stated. The evidence ~~may be~~ must be clear and convincing before you may consider it for this limited purpose.

T.P.I.--CRIM. 37.13

EXPERT WITNESS

Generally a witness may not testify as to his opinions or conclusions. But the court may permit a witness who has special knowledge or experience on a particular question to testify as an expert on that question.¹ An expert witness may state an opinion and give reasons for his testimony.

Expert testimony should be received by you with caution.² While expert testimony is sometimes the only means of, or the best way of reaching the truth, yet it is largely a field of speculation, beset with pitfalls and uncertainties, and requires careful and intelligent evaluation on your part if it is to be a valid means of reaching the truth.² You are not bound to accept expert testimony, but you should give it such weight and value as you think it deserves along with all the other evidence in the case, governed by the purpose to arrive at the truth.

T.P.I.--CRIM. 36.01

ALIBI

The defendant has presented evidence of an alibi in this case.¹

An alibi is defined as evidence which, if believed, would establish that the defendant was not present at the scene of the alleged crime when it allegedly occurred. If the defendant was not present when the crime was committed, he/she cannot be guilty.²

The burden is on the state to prove beyond a reasonable doubt that the defendant was at the scene of the crime when it was committed. If you find from your consideration of all the evidence that the state has failed to prove beyond a reasonable doubt that the defendant was at the scene of the crime when it was committed, you must find the defendant not guilty.³

FOOTNOTES

1. Poe v. State, 212 Tenn. 413, 370 S.W.2d 488 (1963).
2. Christian v. State, 555 S.W.2d 863 (Tenn. 1977).
3. Christian v. State, 555 S.W.2d 863 (Tenn. 1977).

T.P.I. -- CRIM. 13.03

SETTING FIRE TO PERSONAL PROPERTY OR LAND

Any person who commits the offense of setting fire to personal property or land is guilty of a felony.

For you to find the defendant guilty of this offense, the state must prove beyond a reasonable doubt the existence of the following essential elements:¹

- (1) that the defendant damaged by fire or explosion the [personal property] [REDACTED] [other property except buildings or structures];

and

- (2) (a) [that the defendant did so without the consent of all persons who have a possessory or proprietary interest therein];

or

- (2) (b) [that the defendant had intent to [destroy] [damage] the said property for an unlawful purpose];

and

- (3) that the defendant acted knowingly.

To constitute a burning within the meaning of this instruction, it is not necessary that the subject of the fire be destroyed. There is a sufficient burning if the nature of the combustible to which the fire or explosive is set is changed or charred.²

"Knowingly" means that a person does an act knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.³

[The requirement of "knowing" is also established if it is shown that the defendant acted intentionally.]⁴

"Intentional" means a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.⁵

"Property" means anything of value, including but not limited to money, real estate, tangible or intangible personal property [REDACTED],
[REDACTED],
[REDACTED],
[REDACTED]

FOOTNOTES

1. Tenn. Code Ann. § 39-14-303(a).
2. See former T.P.I. -- CRIM. 7.01.
3. Tenn. Code Ann. § 39-11-106(a)(20).
4. Tenn. Code Ann. § 39-11-301(a)(2).
5. Tenn. Code Ann. § 39-11-106(a)(18).

CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

[REDACTED]

[illegible]

As To GARY SUTTON

PUNISHMENT OF LIFE IMPRISONMENT

We, the jury, unanimously find that the punishment shall be life imprisonment.

David Mac Lethin

JURY FOREPERSON

Evelyn D. Hefner

JUROR

Richard A. Ballinger

JUROR

Bruce J. Luns

JUROR

James C. Ogles

JUROR

Jeffrey S. Johnson

JUROR

Katherine Maples

JUROR

Billy L. Yarnall

JUROR

Terry Justus

JUROR

Larry H.

JUROR

Howard Hank

JUROR

Glenn Cole

JUROR

CIRCUIT COURT FILED	
HOUR	8:30 P. M.
DATE: FEB 24 1993	
Helen H. Housley	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

2/24/93

DATE

Courtesy of
Time of Death Podcast
by Beth Braden

AS TO GARY SUTTON
PUNISHMENT OF DEATH

(1) We, the jury, unanimously find the following listed statutory aggravating circumstance or circumstances:

(Here list the statutory aggravating circumstance or circumstances so found, which must be limited to those enumerated for your consideration by the court in these instructions.)

(2) We, the jury, unanimously find that the State has proven beyond a reasonable doubt that the statutory aggravating circumstance or circumstances so listed above outweigh any mitigating circumstances.

(3) Therefore, we, the jury, unanimously find that the punishment for the defendant, GARY SUTTON, shall be death.

(Continued)

JURY FOREPERSON

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

JUROR

DATE

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✓

IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

JAMES DELLINGER, and
GARY WAYNE SUTTON

)
) NO. 5035 & 5036
)
)
)
)

MOTION FOR JUDGMENT OF ACQUITTAL AS TO THE DEATH PENALTY

Comes the defendants, by and through counsel, and hereby moves this Honorable Court to grant a motion for judgment of acquittal at the end of the State's proof inasmuch as the State has failed to present any proof that Connie Brannam was a "witness" in the murder of Connie Brannam and inasmuch as the aggravating factor in number seven deals with an individual who commits an armed robbery and other similar felonies and kills a person victimized by the crime. In short, this aggravating circumstance seeks to deter "witness killings." The defendant would further rely on the attached letter from the Honorable David Raybin, along with an article drafted by Mr. Raybin in 1977 which deals with the issue of witness killings.

Respectfully submitted

CIRCUIT COURT FILED
HOUR <u>2:30 p.</u> M
DATE: FEB 24 1993
<i>Thomas H. Hensley</i> CIRCUIT COURT CLERK SEVIER COUNTY, TENN.

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

David Webb
DAVID WEBB
ATTORNEY FOR DEFENDANT

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 22 day of February, 1993.

Edward C. Miller

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JOHN J. HOLLINS, JR.
PATRICK T. McNALLY*

February 16, 1993

* ALSO LICENSED IN KENTUCKY

Mr. Ed Miller
Office of Public Defender
P.O. Box 416
Dandridge, Tennessee 37725

CIRCUIT COURT	
FILED	
HOUR	8:30 PM M
DATE: FEB 24 1993	
<i>Shawn R. Gooden</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

Dear Ed:

This letter is in response to your inquiry of February 15, 1993. Although I drafted the death penalty law, I cannot provide you with any affidavit regarding my intent as to the application of the statute to any particular set of facts because such would be inadmissible. See James Cable v. Jamestown, 818 S.W.2d 338, 341 (Tenn. App. 1991).

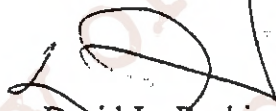
However, I am sending you a copy of an article which I drafted in 1977 which deals with this issue. This particular article was cited with apparent approval by the Tennessee Supreme Court in State v. Terry, 813 S.W.2d 420, 423 (Tenn. 1991).

With respect to the specific issue, see Section 32.39 at page 192 of my book. Footnote number 3 deals with cases where this particular aggravating factor has applied, specifically Melson and Teague. These cases construe that particular circumstance and require that the person killed must have been a witness to the previous homicide. Perhaps the resource center might give you additional cases where that aggravating factor has applied to distinguish your set of facts.

I think that an analysis of the cases will show that only a "witness" in the literal sense of the term is what is contemplated by the particular circumstance in your case. As noted in Terry, the courts construe a circumstance in circumstances where it has applied in other factual contexts to give meaning to the circumstance at issue. I think that your facts are so far apart from the traditional utilization that you should be entitled to a judgment of acquittal. I hope that this letter is of assistance to you in this case.

Mr. Ed Miller
February 16, 1993
Page Two

Very truly yours,



David L. Raybin

DLR/lm
Enclosures



JUDICIAL NEWSLETTER

Public Law Research & Service Program

Vol. 4 No. 2 College of Law, University of Tennessee May, 1977

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The Judicial System Education Program is an arm of the Public Law Research and Service Program of the University of Tennessee, College of Law, and is funded in part by the Tennessee Law Enforcement Planning Agency.

J.S.E.P.'s primary activity is developing materials, teaching and planning expertise to use in conducting continuing education Institutes and Seminars for court related personnel of the Tennessee Criminal Justice System.

The Judicial Newsletter is a quarterly publication of the Judicial System Education Program. The Editor-In-Chief of the newsletter is Ms. Theresa Kroll, a senior law student and member of the Tennessee Law Review.

Suggestions for improving the work of the program are welcome.

Rich Reaves
J.S.E.P.
Administrator

Grayfred B. Gray
Coordinator
Public Law Research
and Service Program

Theresa Kroll
Editor-In-Chief

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JUVENILE COURT JUDGES ATTEND SEMINARS

An intensive week of study and discussion for juvenile court judges took place on February 21-25 at the University of Tennessee College of Law. The eight participants attended conferences focusing on the legal authority and powers of the juvenile court, and on that court's relationship to a child's problems with the local school, with mental health resources, and with alcohol, chemical and drug abuse.

The institute was funded by the University of Tennessee College of Law, the Tennessee Law Enforcement and Planning Agency, local governments, and the participants. The following judges helped to make the program a success:

Referee Jim Allen

Judge Frank Halsell

Judge J. P. Kennedy

Judge Jim McKee

Judge Ted Mochow

Judge Edwin Pigue

Judge Roy Tipps

Court Service Officer Phil Sikes

NEW DEATH PENALTY STATUTE ENACTED

David Raybin
Assistant Attorney General
for the State of Tennessee

Editor's Note: Overriding the veto of Governor Blanton, the General Assembly of the State of Tennessee has recently enacted Public Act No. 51, which provides new standards for the imposition of punishment for murder in the first degree. The following analysis was written prior to the passage of the act, and certain revisions have been made to update the wording of the text.

INTRODUCTION

After the decisions of the United States Supreme Court on the constitutionality of the death penalty were rendered on July 2, 1976, members of the Tennessee General Assembly requested that the Attorney General review present Tennessee law and recommend changes in the existing statutes to comply with the requirements of the Constitution. Pursuant to that request the recommendation adopted by the General Assembly takes into consideration the opinions of the United States Supreme Court and the Tennessee Supreme Court with respect to the crime and punishment of murder in the first degree. In general, Public Act No. 51 follows the statutes upheld in Georgia, Florida, and Texas. These statutes and the decisions of the United States Supreme Court approve capital punishment when it is imposed under the following guidelines:

- (1) A bifurcated procedure in which the jury will first determine guilt. In a separate proceeding, the jury will determine the appropriate punishment, either the death penalty or life imprisonment.
- (2) The punishment must be particularized to the offense and to the individual offender. At the sentencing stage, the jury must be given information of any aggravating and mitigating circumstances surrounding the commission of the offense and the offender.
- (3) The jury must be given direction in the proper use of information of aggravating and mitigating circumstances in its determination of the punishment to impose.
- (4) Adequate appellate review must be provided to insure that capital sentences are not imposed arbitrarily.

The new provisions present a capital-sentencing system which embodies all four constitutional concerns enunciated by the United States Supreme Court. This act deals, however, only with murder in the first degree since there is some concern that the death penalty may not be imposed for other types of crimes. However, it is now certain that a death penalty is permissible for murder in the first degree.

ANALYSIS

The following discussion analyzes each separate section of the act with specific references to the opinions of the United States Supreme Court in Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976); Proffitt v. Florida, 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 929 (1976); Jurek v. Texas, 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 913 (1976); Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976); and Roberts v. Louisiana, 428 U.S. 325, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976).

CAPTION

The caption of the new act, while quite lengthy, is drafted comprehensively to avoid the problem the Tennessee Supreme Court found in State v. Hailey, 505 S.W.2d 172 (Tenn. 1974) with the 1973 Tennessee death penalty statute, striking it down because the caption of the act was not broad enough to cover all the subject matter set forth in the body of the act. The caption in this act should obviate that problem.

SECTION I

SECTION 1 amends T.C.A. §39-2402, which defines murder in the first degree. This amendment returns to the original common law form of the definition of murder in the first degree. This definition has been used in Tennessee for many years and presents no real problems. The only real addition to the common law form of first degree murder is the addition of "aircraft piracy" and the "unlawful placing of a bomb." Since these acts are clearly dangerous to human life they should come within the traditional felony murder rule. It should be noted that the felony murder rule as contained in the act is the same as under the common law form. See Farmer v. State, 201 Tenn. 107, 296 S.W.2d 879 (1956), for a discussion of the Tennessee felony murder rule to which this bill returns.

The act provides in subsection (b) of amended T.C.A. §39-2402 for a punishment of either death or imprisonment for life upon a conviction for first degree murder. Each of the

death penalty statutes recently approved by the United States Supreme Court contained a provision also for life imprisonment. While prior Tennessee first degree murder statutes allowed a punishment of from 20 years up to life as an alternative to the death penalty, there is no sound reason now for the provision to authorize terms of less than life. This is true because, although at one time murder in the second degree was punished by imprisonment for a term of only from ten to twenty years while first degree murder carried a punishment of imprisonment of from twenty years to life or the death penalty, the punishment for second degree murder now fully covers the range of from ten years to life imprisonment. Consequently, the new punishment provisions for murder in the first degree overlap the existing statutory punishment for murder in the second degree only as to life imprisonment.

SECTION 2

SECTION 2 of the act, amending T.C.A. §39-2404, deals with the procedure for imposing the death penalty or life imprisonment after a verdict of guilty of murder in the first degree is rendered. It requires a separate sentencing proceeding to determine the punishment. The three statutes which were upheld by the United States Supreme Court have such separate sentencing procedures. The United States Supreme Court stated: "When a human life is at stake and when the jury must have information prejudicial to the question of guilt but relevant to the question of penalty in order to impose a rational sentence, a bifurcated system is more likely to ensure elimination of the constitutional deficiencies identified in Furman." [Gregg v. Georgia, 428 U.S. at 191, 96 S.Ct. at 2934.] Subsection (a) of T.C.A. §39-2404, as amended, complies with this procedure by requiring the separate sentencing determination. Subsection (a) further requires that the same members of the jury which found guilt determine what the punishment should be. Under T.C.A. §40-2528 (1976 Supp.) the jurors cannot separate at any time during the trial of capital cases.

Subsection (b) of T.C.A. §39-2404, as amended, allows the attorney for the State and the attorney for the defendant the opportunity to make an opening argument to the jury on the question of punishment before evidence is introduced in the sentencing hearing. Because the separate sentencing hearing concept is relatively new to Tennessee, the best procedure is to set forth explicit rules to be followed in conducting these hearings. This will promote uniformity of practice throughout the State and appears to be a logical extension of T.C.A. §20-1329, which allows an opening statement in criminal as well as civil cases.

Subsection (c) of T.C.A. §39-2404, as amended, deals with evidence which may be presented in the sentencing proceeding. In short, relevant evidence of every sort is admissible so long as it does not violate some constitutional exclusionary rule and provided the defendant has an opportunity to rebut any hearsay statements so admitted. This subsection was patterned largely after Rule 32 of the Proposed Tennessee Rules of Criminal Procedure promulgated by the Tennessee Supreme Court. A similar rule prevails in federal practice and under the Georgia statute. As to the latter statute, the United States Supreme Court noted in Gregg v. Georgia, 428 U.S. at 203, 96 S.Ct. at 2939:

We think that the Georgia court wisely has chosen not to impose unnecessary restrictions on the evidence that can be offered at such a hearing and to approve open and far-ranging argument.... So long as the evidence introduced and the arguments made at the presentence hearing do not prejudice a defendant, it is preferable not to impose restrictions. We think it desirable for the jury to have as much information before it as possible when it makes the sentencing decision....

Subsection (d) of T.C.A. §39-2404, as amended, allows both the State and the defendant an opportunity to make a closing argument to the jury to urge suggested punishments. Since the right to make a closing argument to the jury appears to be of constitutional dimensions, this right is preserved in this act. [Herring v. New York, 422 U.S. 853, 95 S.Ct. 2550, 45 L.Ed.2d 593 (1975).] The order of closing argument so provided, with the State having the right of closing, conforms to present Tennessee law on the subject. [Myers v. State, 470 S.W.2d 848 (Tenn. Crim. App. 1971) and Hayes v. State, 470 S.W.2d 950 (Tenn. Crim. App. 1971).]

Subsections (e), (f) and (g) of T.C.A. §39-2404, as amended, deal with the manner in which the jury arrives at a punishment. The United States Supreme Court has made it clear that there must be some guidance given to the jury in arriving at a punishment when the death penalty is a possibility:

Since the members of a jury will have had little, if any, previous experience in sentencing, they are unlikely to be skilled in dealing with the information they are given [in the sentencing hearing].... It seems clear, however, that the problem will be alleviated if the jury is given guidance regarding the factors about the crime and the defendant that the State, representing organized society, deems particularly relevant to the sentencing decision. [Gregg v. Georgia, 428 U.S. at 192, 96 S.Ct. at 2934.]

Under the provisions of the new act such guidance would be given by instructing the jury to consider evidence of aggravating circumstances and of mitigating circumstances, as provided in subsections (f) and (g) of T.C.A. §39-2404 as amended. Subsection (e) further provides that all evidence introduced at both the guilt and sentencing hearings may be considered in arriving at a punishment.

Under subsections (f) and (g), in arriving at punishment the jury must go through a specific analysis in considering the aggravating and mitigating circumstances. The jury must first determine whether the State has proved any of the statutory aggravating circumstances beyond a reasonable doubt. If the jury unanimously finds that none of the statutory aggravating circumstances has been established by the State beyond a reasonable doubt, they must return a verdict of life imprisonment. Likewise, if they unanimously find that the State has established a statutory aggravating circumstance beyond a reasonable doubt but that this circumstance is outweighed by any mitigating circumstances, the punishment, again, must be life imprisonment.

These determinations must be put in writing, signifying that there were no mitigating circumstances sufficiently substantial to outweigh the statutory aggravating circumstance or circumstances so found. They must be given to the judge along with the sentence of death, thus assuring that the jury has gone through the correct analysis in arriving at a death sentence. This is the suggested procedure of the Model Penal Code §201.6, Comment 3, page 72 (TENT. DRAFT NO. 9, 1959), noted with approval by the United States Supreme Court, Jurek v. Texas, 428 U.S. at 271, 96 S.Ct. at 2956 n.6.

Taking into account the possibility of a hung jury on the issue of punishment, subsection (h) further provides that if the jury cannot ultimately agree as to punishment the judge shall sentence the defendant to life imprisonment. Thus, it is not afterwards possible for the judge to impose the death penalty. This provision is patterned after the Texas Criminal Code. [Vernon's Texas Codes Annotated - Penal §19.03, Practice Commentary, page 107 (1974).] Obviously, the jury should not at any time be made aware of the procedure that would be followed if they should fail to agree on a sentence; and this is specifically set forth in the statute.

Subsection (i) sets forth the statutory aggravating circumstances, at least one of which the jury must find in order to return a death penalty. These eleven aggravating circumstances are patterned after those approved by the United States

Supreme Court.

The first aggravating circumstance allows the death penalty if the defendant was over 18 years of age and the murder was committed against a person under 12 years of age. In short, the death penalty can be imposed if an adult kills a child of such age. Children, like policemen or firemen, are a special class of individuals who are particularly susceptible to assault and possible death. Because of their vulnerability, the killing of a child is included as an aggravating circumstance. The respective ages thus set forth insure that it is only the killing of a young child by an adult that warrants the death penalty in this aggravating circumstance.

The second aggravating circumstance to be considered is whether the defendant has been previously convicted of a felony involving the use or threat of violence. This provision is patterned after the Florida statute, upheld in Proffitt.

The third aggravating circumstance to be considered is whether the defendant knowingly created a risk of death to two or more persons other than the victim while he was committing his act of murder. Under proper appellate interpretation this provision appears to be constitutional. [See Gregg v. Georgia, 428 U.S. at 202, 96 S.Ct. at 2939, and Proffitt v. Florida, 428 U.S. at 256, 96 S.Ct. at 2968.]

The fourth aggravating circumstance is that of murder for hire - whether the defendant was himself employed or employed another to commit the murder. This particular aggravating circumstance is directed at deterring "contract" killings.

The fifth aggravating circumstance to be considered is whether the murder was "especially heinous, atrocious, or cruel." Florida's identical provision has been interpreted by its Supreme Court as being directed only at "the conscienceless or pitiless crime which is unnecessarily tortuous to the victim." This statutory provision as construed was upheld in Proffitt. Georgia's somewhat similar aggravating circumstance authorizing the death penalty if the murder was "outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim" likewise was upheld in Gregg.

Aggravating circumstances six, seven, and eight deal with defendants who commit murder during the course of other crimes or while the defendants are in custody or are escaping from custody. These aggravating circumstances are based on the

Georgia and Florida statutes as well as the Model Penal Code. While the seventh aggravating circumstance bears a similarity to the felony murder rule under the definition of first degree murder, there is no prohibition against using this as a further aggravation of the crime. It should be noted that the defendant in Gregg was convicted under the felony murder rule which is much broader in Georgia than as drafted in this act. The jury in that case found as the aggravating circumstance that the murder was committed during the course of the armed robbery, and the death sentence was imposed. The seventh aggravating circumstance, however, serves a different purpose than the felony murder rule. The latter serves to supply the requisite intent to commit the crime or kill which murder requires. [See Farmer v. State, supra.] However, the seventh aggravating circumstance deals with an individual who commits an armed robbery and other similar felonies and kills the person victimized by the other crime. In short, this aggravating circumstance seeks to deter "witness killings."

Aggravating circumstances nine, ten and eleven deal with the murder of a peace officer, fireman, judge, district or state attorney general, or a popularly elected official. These aggravating circumstances are particularly directed toward "assassination-like" killings. It is not enough that the victim just happened to have been one of these designated classes of individuals -- the defendant must have known or, in some instances, have had good reason to know that the victim was such an individual and the killing must have had some relationship to the position held by the victim. Thus, if an individual kills a judge because of some unfavorable ruling or prior sentence, the death penalty could be imposed.

Subsection (j) sets forth the mitigating factors to be considered by the jury. It should be noted that any factor in mitigation, not limited to these specific factors set forth in the statute, may be considered by the jury. In short, the factors in mitigation are open-ended whereas the factors in aggravation are limited to those specifically set forth by statute. This formulation allows the jury to consider virtually anything the defendant wishes to bring forward to suggest that he should not be executed.

With respect to the requirements of factors in mitigation, the United States Supreme Court clearly stated that "in order to meet the requirements of the Eighth and Fourteenth Amendments, a capital-sentencing system must allow the sentencing authority to consider mitigating circumstances." [Jurek v. Texas, 428 U.S. at 271, 96 S.Ct. at 2956.] The Tennessee Supreme Court

in Collins v. State ___ S.W.2d ___ (Tenn. Jan. 24, 1977), also indicated that the mitigating circumstances should be "delineated by statute."

Eight mitigating circumstances are suggested by the statute for the jury's consideration. The first deals with the defendant who has no significant history of prior criminal activity, thus providing a direct counter balance for the aggravating circumstance of the violent crime and the habitual offender. Consideration is given to the defendant's state of mind when the murder was committed. Further mitigating circumstances include situations where the defendant was under the influence of extreme mental or emotional disturbance, where the victim was a participant in the defendant's conduct or consented to the act, or where the defendant reasonably believed that the circumstances provided a moral justification for the murder. The fifth and sixth mitigating circumstances involve the defendant who was only a minor accomplice in the murder or who acted under extreme duress or another's domination. There is also the situation where the defendant is too young or too old, either of which can be considered by the jury as a mitigating circumstance. The last suggested statutory mitigating circumstance considers the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform it to the law due to mental disease, defect, or intoxication. The jury, however, can consider any other mitigating circumstance the defendant presents to them.

The provisions of subsections (e) through (j) therefore comply with the most basic constitutional requirement of consideration of aggravating and mitigating factors. These factors are presented in "sufficiently detailed procedures to accomplish 'controlled discretion' by the jury in the imposition of the death penalty . . .," Collins v. State, ___ S.W.2d ___ (Tenn. Jan. 24, 1977).

Subsection (k) states that if, upon a motion for a new trial, the judge finds error in the sentencing hearing where punishment was determined, a new trial on only the sentencing question is ordered. This is existing law. [Farris v. State, 535 S.W.2d 608 (Tenn. 1976).] Subsection (k) also restates the existing principle of law that where a conviction is reversed or a new trial granted, the second trial shall include all the original possible punishments. Implicit within this subsection is the holding of the Tennessee Supreme Court in Sommerville v. State, 521 S.W.2d 792 (Tenn. 1975), that jurors on a retrial should not be aware of the sentence imposed at the prior trial.

SECTION 3

SECTION 3, amending T.C.A. §39-2405, deals with waivers of separate elements of the bifurcated proceeding. Under this section of the act a defendant may waive the right to have the jury determine guilt while preserving his right to have a jury determine punishment. Under the same section, he may also waive the right to have a jury determine punishment, in which event the judge determines punishment. The judge must consider the statutory aggravating circumstances and mitigating circumstances in evidence as would have been required of the jury. The judge must also make findings of fact as would have been required of the jury.

SECTION 4

SECTION 4, amending T.C.A. §39-2406, deals with appellate review. This section was patterned after the Georgia statute which was approved by the United States Supreme Court. Under subsection (a), whenever a defendant is sentenced to death, that sentence is automatically reviewed by the Tennessee Supreme Court. This is true even when the defendant does not seek to reverse the judgment of conviction itself, and may wish to be executed. This is necessary so that the Supreme Court can examine all cases and compare them to see when the death penalty is justified.

Subsections (b) and (c) set out the order of review by the Tennessee Supreme Court. First, the Court determines if the case can be affirmed as to the first degree murder conviction considering legal errors assigned. The Court retains its present full authority to correct these errors by reversing for a new trial or other appropriate relief. However, if the Court affirms the conviction, the Court then turns to the review of the death penalty itself. These appellate review procedures appear to be constitutionally required to insure, at least on a statewide level, that the death penalty is not imposed in an arbitrary fashion.

The sentencing review by the Tennessee Supreme Court shall include a determination of four issues expressly stated in the language of the statute: (1) whether the sentence of death was imposed in any arbitrary fashion; (2) whether the evidence supports the jury's finding of aggravating circumstances; (3) whether the evidence supports the jury's finding of the absence of outweighing mitigating circumstances; and (4) whether

the sentence of death is excessive or disproportionate to the penalty imposed in similar cases.

Subsection (c) also gives the Tennessee Supreme Court the authority to promulgate rules to assist the Court in determining the validity of the death sentence. For example, the Georgia Supreme Court requires the trial judge to fill out a report, described by the United States Supreme Court, Gregg v. Georgia, 428 U.S. at 167, 96 S.Ct. at 2922, as follows:

The report is in the form of a six and one-half page questionnaire, designed to elicit information about the defendant, the crime, and the circumstances of the trial. It requires the trial judge to characterize the trial in several ways designed to test for arbitrariness and disproportionality of sentence. Included in the report are responses to detailed questions concerning the quality of the defendant's representation, whether race played a role in the trial, and whether, in the trial court's judgment, there was any doubt about the defendant's guilt or the appropriateness of the sentence.

The Tennessee Supreme Court may find it desirable to have similar information in death penalty cases. In addition, the Court could require related information from trials where first degree murder was charged but guilt was determined as to a lesser offense, or the defendant was found guilty of first degree murder but only received life imprisonment.

Subsection (d) gives the Court the authority to modify the death sentence to life imprisonment if it is found that the punishment fails to meet the standards set forth in subsection (c). However, if the Court finds that the death penalty is appropriate, it may affirm the death sentence.

SECTION 5

SECTION 5, amending T.C.A. §39-2407, deals with the punishment of accessories before the fact to murder in the first degree. Under former law an accessory before the fact who was tried after the principal could receive the death penalty; but if he were tried before the principal the most he could receive was life imprisonment. If this procedure had remained the law, an individual convicted of being an accessory before the fact to murder who received the death penalty after the trial of the principal could argue that

had he been tried before the principal the most he would have received would have been life imprisonment. In order to avoid constitutional attacks on the statute on this ground, the penalty that may be imposed on an accessory before the fact to murder in the first degree no longer depends on when the principal's trial occurs or the penalty imposed on the principal. An accessory before the fact can be sentenced to life imprisonment or to death.

SECTIONS 6 and 7

SECTION 6 provides that if any provision in the Code sections amended by this act is held unconstitutional by the state supreme court or by a federal court so as to preclude use of the death penalty, a person previously sentenced to death under these amended sections will be resentenced to life imprisonment. This eliminates the requirement of a whole new trial as to sentencing where the death penalty is no longer a constitutional reality for a particular defendant. This does not mean that a defendant whose conviction is reversed due to some other ground will avoid a death penalty on a retrial. In addition, SECTION 7, contains a standard severability clause, so that if any part of the act were held to be void, the decision of the court so holding would not affect any of the remaining provisions.

SECTION 8

SECTION 8 states that the act will take effect on becoming law. Thus, only individuals who commit crimes after the effective date of the act will be subject to its provisions.

CONCLUSION

While the new statute institutes some novel, but nonetheless required, trial procedures with respect to first degree murder, the concepts of mitigating factors and alternatives of death or life imprisonment are familiar to Tennessee. Indeed, Tennessee was the first state in the nation to allow the jury to consider "mitigating circumstances" and impose a punishment of life imprisonment. [Public Acts of 1837, Ch. 29.] Therefore, this new act, while complying with recent Supreme Court rulings, also returns our State to its historical tradition in considering the manner in which capital offenses are tried.

STATE OF TENNESSEE				Judge Honorable Rex Henry Ogle				Docket Number 5035, 5036	
 SPECIFIC DATA PRESENTENCE REPORT				Court Sevier County Circuit				Sentencing Hearing Date	
				Region East Tennessee				Date of Conviction	
				Defense Attorney Susanna W. Laws Pub Def				County Sevier	
				District Attorney ADAG Al Schmutzer, Jr.				Date Referred 3/5/92	
IDENTIFYING DATA				Address 2955 Bluff Heights Road Sevierville, TN				Report Due 2/16/93	
Name (Last, First, Middle) AKA DELLINGER, James Anderson								Prepared By/Date Lisa Ball 2/12/93	
Age 42	D.O.B. 1/24/51	Sex Male	Race White	Ht. 5'11"	Wt. 180	Eyes Hazel	Hair Red	Marital Status Married	
Social Security Number 255-51-0703				FBI Number 81920446				FBI Sheet Attached Yes No XXX	

OFFENSE	
Offense/Date Occurred Presentment: 2/92 First Degree Murder, Arson, Arson	Date When Arrested, by Whom and Where Arrested (County) 3/5/92 Sevier County Sheriff's Department Sevierville, Tennessee
Present Location of Defendant	Sentence Imposed
Bond _____ In Custody XX Since	Disposition
Amount _____ Time In Jail 3/5/92	

OFFICIAL VERSION	
CONFIDENTIAL CIRCUIT COURT FILED HOUR 8:30 PM DATE: FEB 24 1993 Circuit Court Clerk Sevier County, Tenn. EXHIBIT #5035, 5036 481	

Re: Dellinger, James Anderson
Page 2

ENHANCING FACTORS:

No enhancing factors were filed by the Attorney General in this case, according to the Court's records, however a Notice to Seek the Death Penalty has been filed.

MITIGATING FACTORS:

No mitigating factors were filed by the defense attorney in this case, according to the court's records; nor were any discovered by this officer during the course of this investigation.

PRIOR RECORD:

Date	Offense	Court	Date/Disposition
4/16/92	1st Degree Murder	Blount County Criminal	Pending
3/5/92	1st Degree Murder, Arson - 2 cts	Sevier County Trial Justice	Instant Offense
1/18/92	Public Intoxication	Sevier County Trial Justice	1/18/92 Paid fine \$110.50
10/4/91	Public Intoxication	Sevier County Trial Justice	10/4/91 Paid fine
9/11/91	Public Intoxication	Blount County General Sessions	10/24/91 Failed to appear, Forfeiture of Bond (\$200)
7/17/91	Vandalism	Sevier County Trial Justice	8/16/91 Fined, costs, 30 days susp. to restitution of 1/3 damages
7/17/91	Assault	Sevier County Trial Justice	8/16/91 - 30 days probation fine, costs, 6 mos suspended to 7 days, 6 mos probation restraining order
*7/15/91	Aggravated Assault	Sevier County Trial Justice	8/30/91 Dismissed
*1/10/91	Aggravated Assault	Sevier County Trial Justice	7/12/91 Dismissed, Advisement 6 mos, restraining order
8/30/89	Felonious Assault Aggravated Assault	Sevier County Trial Justice	9/19/89 Fine, costs, 11/29 susp. to 11/29 probation, both counts amended to Simple Assault
8/14/89	Breach of Peace Threatening an Officer	Sevier County Trial Justice	2/13/90 Fined \$5, 30 days time served, 6 mos. probation

Re: Dellinger, James Anderson

Page 3

PRIOR RECORD: Continued

Date	Offense	Court	Date/Disposition
8/14/89	Public Intoxication	Sevier County Trial Justice	2/13/90 Paid fine \$101.00 30 days susp. to time served, 6 mos. probation
8/15/89	Felonious Assault	Sevier County Trial Justice	9/22/89 Dismissed
8/16/89	Failure to Report Accident	Sevier County Trial Justice	2/13/90 Dismissed
5/31/89	Contributing to Delinquency of Minor	Sevier County Trial Justice	7/20/89 Advisement 30 days
3/8/89	Rape Robbery	Sevier County Grand Jury	6/21/89 No True Bill both counts
11/7/88	TCA Code 55-10-401	Sevier County Trial Justice	2/28/89 Fine, costs \$50, 11/29 susp. to time served, 11/29 probation
11/7/88	TCA Code 55-10-406	Sevier County Trial Justice	2/28/89 Dismissed
3/20/87	DWI	Sevier County Trial Justice	4/9/87 Fine, costs, \$250, 11/29 susp. to 48 hrs, 11/29 probation
3/20/87	Carrying Firearm w/Intent to go Armed	Sevier County Trial Justice	4/9/87 Fine, costs, 11/29 susp. to 6 mos. probation
8/31/85	DUI, Improper Lane Usage, No proof of Insurance	Cobb Co., GA State Court	Case Pending, Bench Warrant issued 9/17/86
*1/24/85	DUI	Not Available Marietta, GA	Not Available
2/12/83	Viol. of Parole	TN Board of Paroles	No Record at Parole
2/12/83	Destruction of Private Property	Sevier County Trial Justice	No disposition
2/12/83	Receiving & Concealing Stolen Property	Sevier County Trial Justice	2/14/83 Charges dropped
*2/10/83	Fugitive from Justice	Marietta, GA	2/11/83 Waived Extradition no other information

Re: Dellinger, James Anderson
Page 4

PRIOR RECORD: Continued

Date	Offense	Court	Date/Disposition
*8/22/82	Simple Battery, Pointing Gun or Pistol at Another	Cobb Co. Superior Marietta, GA	9/14/82 Dismissed
*3/31/81	DUI	Cobb Co. Superior Marietta, GA	7/6/81 Not available
*3/31/81	Aggravated Assault (Misdemeanor)	Cobb Co. Superior Marietta, GA	7/6/81 Dismissed
*5/12/79	DWI	Knox Co. General Sessions	4/1/80 \$50 fine & costs, 30 days jail
*12/29/67	Larceny	Sevier County Trial Justice	Charge not listed in Docket Book

Criminal Reputation: The defendant is known to local law enforcement officers.

Juvenile: Not checked due to age of defendant.

NCIC: See Prior Record (*)

EDUCATION:

The defendant reported completing the 2nd grade in Pigeon Forge, TN. He has no further training or education.

RESIDENCE

The defendant reported residing with his wife. He has lived in Sevier County most of his life except for approximately 8 years when he lived in Marietta, GA.

EMPLOYMENT:

The defendant is currently unemployed due to his incarceration. He normally works as a carpenter. His last reported employment was in 1989 in Gatlinburg as a carpenter. He has applied for disability due to back problems.

OTHER INFORMATION DEEMED IMPORTANT:

The defendant is not eligible for probation.

Re: Dellinger, James Anderson
Page 5

SOURCES OF INFORMATION:

Sevier County Sheriff's Department
Sevier County Circuit Court Clerk
Sevier County Trial Justice Clerk
TDOC Files

NCIC

Defendant: James Dellinger
Blount County Records Check
Cobb County, GA Sheriff's Department
Cobb County, GA Superior Court
Cobb County, GA Sessions Court

lb/mzh

IN THE CRIMINAL/CIRCUIT COURT OF SEVIER COUNTY, TENNESSEE

Case Number: 5033 Count #: I
Judicial District 4th Judicial Division III

Attorney for the State AL SCHMUTZ JR.
Counsel for Defendant ZANIE DANIELS / DAVID WEBB
☒ Retained; ☐ Appointed; ☐ Public Defender

State of Tennessee

vs.

Defendant GARY WAYNE SUTTON
Date of Birth 2/24/65 Sex M Race W
From Indictment # 5033 Warrant # N/A

Alias N/A
SSN 409-27-4845
TDOC # N/A

JUDGMENT

Comes the District Attorney General for the State and the defendant with counsel of record for entry of judgment.
On the 24 day of Feb., 1993, the defendant:

☐ pled guilty Is found: ☒ guilty ☐ not guilty ☒ jury verdict ☐ not guilty by reason of insanity ☐ bench trial ☐ nolo contendere	Indictment: Class (circle one): <u>1st</u> A B C D E ☒ Felony ☐ Misdemeanor Offense <u>First Degree Murder</u> Amended Charge <u>N/A</u> Offense date <u>2/22/92</u> County <u>Sevier</u> Conviction offense <u>First Degree Murder</u> TCA #: <u>39-13-202</u> Sentence-imposed date <u>2/24/93</u> Conviction class (circle one): <u>1st</u> A B C D E ☒ Felony ☐ Misdemeanor
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After considering the evidence, the entire record, and all factors in T.C.A Title 40, Chapter 35, all of which are incorporated by reference herein, the Court's findings and rulings are:

☒ Sentence Reform Act of 1989 ☐ Mitigated 20% ☐ Mitigated 30% ☐ Standard 30%-Range 1 ☐ Multiple 35% Range 2 ☐ Persistent 45% Range 3 ☐ Career 60% ☐ Multiple Rapist ☒ 1st Degree Murder ☐ Child Rapist	☐ Pre 1982 Sentence: ☐ 1st Degree Murder ☐ Sentence Reform Act of 1982 ☐ 20% Range 1 ☐ 30% Range 1 ☐ 35% Range 2 ☐ 40% Range 2 ☐ 1st Degree Murder	Concurrent with: Consecutive to: <u>Cant II</u>
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Sentenced to: ☒ TDOC ☐ Regional Workhouse ☐ County Jail ☐ Workhouse ☐ Work Release ☐ Probation ☐ Community Based Alternative Specify:	Sentence Length: <u>Years</u> <u>Months</u> <u>Days</u> ☒ Life ☐ Death <u>Years</u> <u>Months</u> <u>Days</u> <u>Hours</u> <u>Week-ends</u> <u>Periodic:</u> <u>% min. svc. prior to program or work release</u> <u>% min. svc. prior to release (Misdemeanor only)</u> <u>Years</u> <u>Months</u> <u>Days</u> <u>Hours</u> <u>Week-ends</u> <u>Periodic:</u> <u>% min. svc. prior to program or work release</u> <u>% min. svc. prior to release (Misdemeanor only)</u> <u>Years</u> <u>Months</u> <u>Days</u> <u>Hours</u> <u>Week-ends</u> <u>Years</u> <u>Months</u> <u>Days</u> <u>Effective:</u> <u>Years</u> <u>Months</u> <u>Days</u> <u>Hours</u> <u>Week-ends</u>
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Pretrial Jail Credit Period: from 3/5/92 to 2/24/93 from to or Number of Days:

Court Ordered Fees and Fines: \$ <u> </u> Criminal Injuries \$ <u> </u> Compensation Fund \$ <u> </u> Supervision \$ <u> </u> Child Support \$ <u>X</u> Court Costs \$ <u> </u> FINE ASSESSED	Restitution: Victim's Name <u>N/A</u> Address <u> </u> Total Amount \$ <u> </u> \$ <u> </u> per month ☐ Unpaid Community Service: <u> </u> Hours, <u> </u> Days, <u> </u> Weeks, <u> </u> Months ☒ The Defendant having been found guilty is rendered infamous.
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Special Conditions: <u>Net Sentence / Life plus two years.</u>	CIRCUIT COURT FILED HOUR <u>9</u> M DATE: <u>FEB 24 1993</u> CIRCUIT COURT CLERK SEVIER COUNTY, TENN.
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486
247
Judge's Name Rex Henry Ogle Judge's Signature [Signature] Date of Entry of Judgment 2/24/93

White copy - Criminal Court Clerk
Yellow Copy - TN Dept. of Correction-MIS-SMS
Pink Copy - Sentencing Commission
Goldenrod - Jail

Attorney for State/Signature (optional) Defendant's Attorney/Signature (optional)

Courtesy of
Time of Death Podcast
by Beth Braden

IN THE CRIMINAL/CIRCUIT COURT OF SEVIER COUNTY, TENNESSEE

Case Number: 5033 Count #: II
Judicial District 4th Judicial Division III

Attorney for the State AJ Schmutzer Jr.
Counsel for Defendant Zane Dantrel / David Webb
☒ Retained; ☐ Appointed; ☐ Public Defender

State of Tennessee

vs.
Defendant GARY WAYNE SUTTON
Date of Birth 2/24/65 Sex M Race W
From Indictment # 5033 Warrant # N/A

Alias N/A
SSN 409 27 4845
TDOC # N/A

JUDGMENT

Comes the District Attorney General for the State and the defendant with counsel of record for entry of judgment.
On the 24 day of Feb, 1993, the defendant:

☒ pled guilty Is found: ☒ guilty ☐ not guilty ☒ jury verdict ☐ not guilty by reason of insanity ☐ bench trial ☐ nolo contendere	Indictment: Class (circle one): 1st A B C D <u>E</u> ☒ Felony ☐ Misdemeanor Offense <u>SETTING FIRE TO PERIS. PROP.</u> Amended Charge <u>N/A</u> Offense date <u>2/22/92</u> County <u>Sevier</u> Conviction offense <u>SETTING FIRE TO PERIS. PROP.</u> TCA #: <u>39-14-303</u> Sentence-imposed date <u>2/24/93</u> Conviction class (circle one): 1st A B C D <u>E</u> ☒ Felony ☐ Misdemeanor
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After considering the evidence, the entire record, and all factors in T.C.A Title 40, Chapter 35, all of which are incorporated by reference herein, the Court's findings and rulings are:

☒ Sentence Reform Act of 1989 ☐ Mitigated 20% ☐ Mitigated 30% ☒ Standard 30% Range 1 ☐ Multiple 35% Range 2 ☐ Persistent 45% Range 3 ☐ Career 60% ☐ Multiple Rapist ☐ 1st Degree Murder ☐ Child Rapist	☐ Pre 1982 Sentence: ☐ 1st Degree Murder ☐ Sentence Reform Act of 1982 ☐ 20% Range 1 ☐ 30% Range 1 ☐ 35% Range 2 ☐ 40% Range 2 ☐ 1st Degree Murder	Concurrent with: Consecutive to: <u>Cant I</u>
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Sentenced to: ☒ TDOC ☐ Regional Workhouse ☐ County Jail ☐ Workhouse ☐ Work Release ☐ Probation ☐ Community Based Alternative Specify: _____	Sentence Length: <u>2</u> Years <u>—</u> Months <u>—</u> Days <u>—</u> Life ☐ Death _____ Years _____ Months _____ Days _____ Hours _____ Week-ends _____ Periodic: (_____) _____ _____ % min. svc. prior to program or work release _____ % min. svc. prior to release (Misdemeanor only) _____ Years _____ Months _____ Days _____ Hours _____ Week-ends _____ Periodic: (_____) _____ _____ % min. svc. prior to program or work release _____ % min. svc. prior to release (Misdemeanor only) _____ Years _____ Months _____ Days _____ Hours _____ Week-ends _____ _____ Years _____ Months _____ Days Effective: _____ _____ Years _____ Months _____ Days _____ Hours _____ Week-ends _____
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Pretrial Jail Credit Period: from 3/5/92 to 2/24/93 from _____ to _____ or Number of Days: _____

Court Ordered Fees and Fines: \$ _____ Criminal Injuries \$ _____ Compensation Fund \$ _____ Supervision \$ _____ Child Support \$ <u>X</u> _____ Court Costs \$ _____ FINE ASSESSED	Restitution: Victim's Name <u>N/A</u> Address _____ Total Amount \$ _____ \$ _____ per month ☐ Unpaid Community Service: _____ Hours, _____ Days, _____ Weeks, _____ Months ☒ The Defendant having been found guilty is rendered infamous.
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Special Conditions: Not Sentence / Life plus two years.

CIRCUIT COURT FILED HOUR <u>9 7a</u> M DATE: <u>FEB 24 1993</u> <u>487</u> <u>2/24/93</u> CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	<u>Rex Henry Ogle</u> Judge's Name	<u>[Signature]</u> Judge's Signature	<u>2/24/93</u> Date of Entry of Judgment
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White copy - Criminal Court Clerk
Yellow Copy - TN Dept. of Correction-MIS-SMS
Pink Copy - Sentencing Commission
Goldenrod - Jail

Attorney for State/Signature (optional) _____ Defendant's Attorney/Signature (optional) _____

Entered Minute Book A-7 Page 248

Courtesy of
Time of Death Podcast
by Beth Braden

IN THE CRIMINAL/CIRCUIT COURT OF SEVIER COUNTY, TENNESSEE

Case Number: 5035 Count #: I
Judicial District 4th Judicial Division III

Attorney for the State A. J. Schmutzer Jr.
Counsel for Defendant Ed Miller / Sussana Thome
☐ Retained; ☐ Appointed; ☒ Public Defender

State of Tennessee

vs.
Defendant JAMES ANDERSON DELLINGER
Date of Birth 1/24/51 Sex M Race W
From Indictment # 5035 Warrant # N/A

Alias N/A
SSN 255-51-0703
TDOC # N/A

JUDGMENT

Comes the District Attorney General for the State and the defendant with counsel of record for entry of judgment.
On the 24 day of Feb., 1993, the defendant:

☐ pled guilty Is found: ☒ guilty ☐ not guilty ☒ Jury verdict ☐ not guilty by reason of insanity ☐ bench trial ☐ nolo contendere	Indictment: Class (circle one): <u>1st</u> A B C D E ☒ Felony ☐ Misdemeanor Offense <u>First Degree Murder</u> Amended Charge <u>N/A</u> Offense date <u>2/22/92</u> County <u>Sevier</u> Conviction offense <u>First Degree Murder</u> TCA #: <u>39-13-202</u> Sentence-imposed date <u>2/24/93</u> Conviction class (circle one): <u>1st</u> A B C D E ☒ Felony ☐ Misdemeanor
---	---

After considering the evidence, the entire record, and all factors in T.C.A Title 40, Chapter 35, all of which are incorporated by reference herein, the Court's findings and rulings are:

☒ Sentence Reform Act of 1989 ☐ Mitigated 20% ☐ Mitigated 30% ☐ Standard 30% Range 1 ☐ Multiple 35% Range 2 ☐ Persistent 45% Range 3 ☐ Career 60% ☐ Multiple Rapist ☒ 1st Degree Murder ☐ Child Rapist	☐ Pre 1982 Sentence: ☐ 1st Degree Murder ☐ Sentence Reform Act of 1982 ☐ 20% Range 1 ☐ 30% Range 1 ☐ 35% Range 2 ☐ 40% Range 2 ☐ 1st Degree Murder	Concurrent with: Consecutive to: <u>Count II</u>
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Sentenced to: ☒ TDOC ☐ Regional Workhouse ☐ County Jail ☐ Workhouse ☐ Work Release ☐ Probation ☐ Community Based Alternative Specify: _____	Sentence Length: <u>Years</u> <u>Months</u> <u>Days</u> ☒ Life ☐ Death _____ % min. svc. prior to program or work release _____ % min. svc. prior to release (Misdemeanor only) _____ % min. svc. prior to program or work release _____ % min. svc. prior to release (Misdemeanor only) _____ % min. svc. prior to program or work release _____ % min. svc. prior to release (Misdemeanor only)
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Pretrial Jail Credit Period: from 3/5/92 to 2/24/93 from _____ to _____ or Number of Days: _____

Court Ordered Fees and Fines: \$ _____ Criminal Injuries \$ _____ Compensation Fund \$ _____ Supervision \$ _____ Child Support \$ <u>X</u> _____ Court Costs \$ _____ FINE ASSESSED	Restitution: Victim's Name <u>N/A</u> Address _____ Total Amount \$ _____ \$ _____ per month ☐ Unpaid Community Service: _____ Hours, _____ Days, _____ Weeks, _____ Months ☒ The Defendant having been found guilty is rendered infamous.
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Special Conditions: Not Sentence / Life plus two years.

CIRCUIT COURT
 FILED
 1993 FEB 24
 DATE: FEB 24 1993
 488
 252
 CIRCUIT COURT CLERK
 SEVIER COUNTY, TENN.

Judge's Name Box Henry Oyle Judge's Signature [Signature] Date of Entry of Judgment 2/24/93

White copy - Criminal Court Clerk
Yellow Copy - TN Dept. of Correction-MIS-SMS
Pink Copy - Sentencing Commission
Goldenrod - Jail
Attorney for State/Signature (optional) _____ Defendant's Attorney/Signature (optional) _____

IN THE CRIMINAL/CIRCUIT COURT OF SEVIER COUNTY, TENNESSEE

Case Number: 5035 Count #: II
Judicial District 4th Judicial Division III

Attorney for the State A. Schmutzer Jr.
Counsel for Defendant Ed Miller/Sustana Thomas
☐ Retained; ☐ Appointed; ☒ Public Defender

State of Tennessee

vs.

Defendant JAMES ANDERSON DELLINGER

Alias N/A

Date of Birth 1/24/51 Sex M Race W

SSN 255-51-0703

From Indictment # 5035 Warrant # N/A

TDOC # N/A

JUDGMENT

Comes the District Attorney General for the State and the defendant with counsel of record for entry of judgment.
On the 24 day of Feb., 1993, the defendant:

☐ pled guilty

Is found:

☒ guilty ☐ not guilty
☒ jury verdict ☐ not guilty by reason of insanity
☐ bench trial
☐ nolo contendere

Indictment: Class (circle one): 1st A B C D E ☒ Felony ☐ Misdemeanor
Offense SETTING FIRE TO PERCS. PROP.
Amended Charge N/A
Offense date 2/22/92 County Sevier
Conviction offense SETTING FIRE TO PERCS. PROP.
TCA #: 39-14-503 Sentence-imposed date 2/24/93
Conviction class (circle one): 1st A B C D E ☒ Felony ☐ Misdemeanor

After considering the evidence, the entire record, and all factors in T.C.A Title 40, Chapter 35, all of which are incorporated by reference herein, the Court's findings and rulings are:

☒ Sentence Reform Act of 1989

☐ Mitigated 20%
☐ Mitigated 30%
☒ Standard 30% Range 1
☐ Multiple 35% Range 2
☐ Persistent 45% Range 3
☐ Career 60% ☐ Multiple Rapist
☐ 1st Degree Murder ☐ Child Rapist

☐ Pre 1982 Sentence:

☐ 1st Degree Murder
☐ Sentence Reform Act of 1982
☐ 20% Range 1
☐ 30% Range 1
☐ 35% Range 2
☐ 40% Range 2
☐ 1st Degree Murder

Concurrent with:

Consecutive to:

Count I

Sentenced to: ☒ TDOC 2 Years — Months — Days — Life ☐ Death

☐ Regional Workhouse — Years — Months — Days
☐ County Jail — Years — Months — Days — Hours — Week-ends — Periodic: (—)
— % min. svc. prior to program or work release — % min. svc. prior to release (Misdemeanor only)
☐ Workhouse — Years — Months — Days — Hours — Week-ends — Periodic: (—)
— % min. svc. prior to program or work release — % min. svc. prior to release (Misdemeanor only)
☐ Work Release — Years — Months — Days — Hours — Week-ends
☐ Probation — Years — Months — Days Effective: —
☐ Community Based Alternative — Years — Months — Days — Hours — Week-ends
Specify: —

Pretrial Jail Credit Period: from 3/5/92 to 2/24/93 from — to — or Number of Days: —

Court Ordered Fees and Fines:

\$ — Criminal Injuries
\$ — Compensation Fund
\$ — Supervision
\$ — Child Support
\$ X Court Costs
\$ — FINE ASSESSED

Restitution: N/A
Victim's Name —
Address —
Total Amount \$ — \$ — per month
☐ Unpaid Community Service: — Hours, — Days, — Weeks, — Months

☒ The Defendant having been found guilty is rendered infamous.

Special Conditions: Not Sentence / Life plus two years

CIRCUIT COURT
FILED
HOUR 9:30 M
DATE: FEB 24 1993
489
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

Rex Henry Ogbe
Judge's Name

[Signature]
Judge's Signature

2/24/93
Date of Entry of Judgment

White copy - Criminal Court Clerk
Yellow Copy - TN Dept. of Correction-MIS-SMS
Pink Copy - Sentencing Commission
Goldenrod - Jail

Attorney for State/Signature (optional)

Defendant's Attorney/Signature (optional)

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE

WEDNESDAY, FEBRUARY 17, 1993

*Filed March 19, 1993
Helen K. Loreday, Clerk*

Court met pursuant to adjournment, present and presiding The Honorable Rex Henry Ogle, Judge of Division III, of said Court, when the following proceedings were had and entered of record, to-wit:

STATE OF TENNESSEE

VS.

No. 5033 and 5035

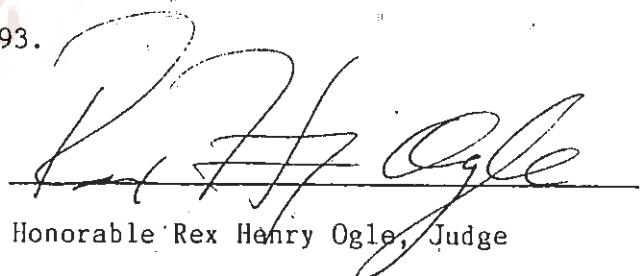
GARY WAYNE SUTTON, ALIAS and

JAMES ANDERSON DELLINGER, ALIAS

Came the District Attorney General and the Defendant, Gary Wayne Sutton, in person with his attorneys, David W. Webb and Zane Daniel, and the Defendant, James Anderson Dellinger, in person with his attorneys, Ed Miller and Susanna Laws Thomas, for trial on the indictment upon the Defendants' pleas' of not guilty before the Court.

Upon the voir dire process not being complete, those jurors seated in the jury box at the hour of adjournment were respited and sequestered in the custody of Ms. Velma Phibbs and Jack Phibbs, officers who were sworn according to law.

These were all of the proceedings had this 17th day of February, 1993. Court thereupon adjourned. These minutes were read and approved for entry this 5 day of March, 1993.


Honorable Rex Henry Ogle, Judge

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE

THURSDAY, FEBRUARY 18, 1993

*Filed March 19, 1993
Helen K. Loneyday, Clerk*

Court met pursuant to adjournment, present and presiding The Honorable Rex Henry Ogle, Judge of Division III, of said Court, when the following proceedings were had and entered of record, to-wit:

STATE OF TENNESSEE

VS.

No. 5033 and 5035

GARY WAYNE SUTTON, ALIAS and

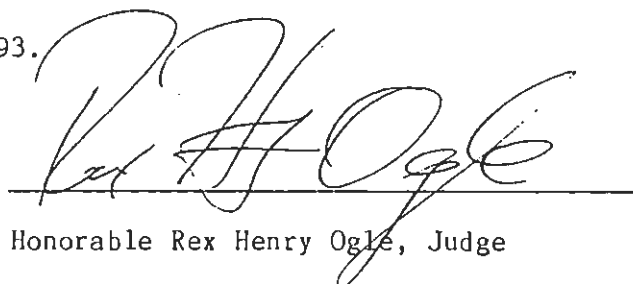
JAMES ANDERSON DELLINGER, ALIAS

Came the District Attorney General and the Defendant, Gary Wayne Sutton, in person with his attorneys, David W. Webb and Zane Daniel, and the Defendant, James Anderson Dellinger, in person with his attorneys, Ed Miller and Susanna Laws Thomas, for trial on the indictment upon the Defendants' pleas' of not guilty before the Court and the following jury:

- | | |
|----------------------|-----------------------|
| 1. Katherine Maples | 7. Billy Yarnell |
| 2. Bruce J. Gaps | 8. Jeffrey G. Johnson |
| 3. Richard Ballenger | 9. James C. Ogle |
| 4. Glenn Cole | 10. Howard Houk |
| 5. Evelyn W. Griffin | 11. Terry Justus |
| 6. Larry Gibson | 12. David MacLellan |

Together with Robert Allen and Michelle King alternate jurors, all duly qualified, elected, and sworn, who after having been selected and the hour of adjournment having arrived, were respited and sequestered in the custody of Mrs. Velma Phibbs and Jack Phibbs, officers who were sworn according to law.

These were all of the proceedings had this 18th day of February, 1993. Court thereupon adjourned. These minutes were read and approved for entry this 5 day of March, 1993.


Honorable Rex Henry Ogle, Judge

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE

FRIDAY, FEBRUARY 19, 1993

*Filed March 19, 1993
Helen K. Loneyday, C*

Court met pursuant to adjournment, present and presiding The Honorable Rex Henry Ogle, Judge of Division III, of said Court, when the following proceedings were had and entered of record, to-wit:

STATE OF TENNESSEE

VS.

No. 5033 and 5035

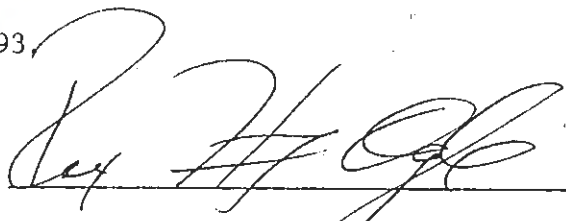
GARY WAYNE SUTTON, ALIAS and

JAMES ANDERSON DELLINGER, ALIAS

Came the District Attorney General and the Defendant, Gary Wayne Sutton, in person with his attorneys, David W. Webb and Zane Daniel and the Defendant, James Anderson Dellinger, in person with his attorneys, Ed Miller and Susanna Laws Thomas, and the same officers in charge of the same jury who were respited and sequestered at the hour of adjournment yesterday, and the trial was continued.

The jury having heard only part of the proof and the hour of adjournment having arrived, were respited and sequestered in the custody of Mrs. Velma Phibbs and Jack Phibbs, officers who were sworn according to law.

These were all of the proceedings had this 19th day of February, 1993. Court thereupon adjourned. These minutes were read and approved for entry this 5 day of March, 1993.


Honorable Rex Henry Ogle, Judge

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE

SATURDAY, FEBRUARY 20, 1993

*Filed March 19, 1993
Helen K. Lueders, Clerk*

Court met pursuant to adjournment, present and presiding The Honorable Rex Henry Ogle, Judge of Division III, of said Court, when the following proceedings were had and entered of record, to-wit:

STATE OF TENNESSEE

VS.

No. 5033 and 5035

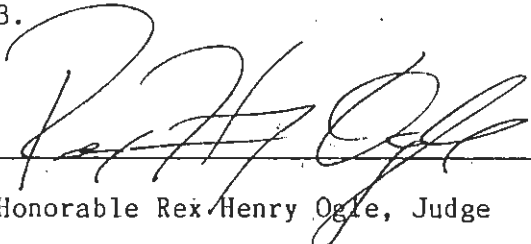
GARY WAYNE SUTTON, ALIAS and

JAMES ANDERSON DELLINGER, ALIAS

Came the District Attorney General and the Defendant, Gary Wayne Sutton, in person with his attorneys, David W. Webb and Zane Daniel and the Defendant, James Anderson Dellinger, in person with his attorneys, Ed Miller and Susanna Laws Thomas, and the same officers in charge of the same jury who were respited and sequestered at the hour of adjournment yesterday, and the trial was continued.

The jury having heard only part of the proof and the hour of adjournment having arrived, were respited and sequestered in the custody of Mrs. Velma Phibbs and Jack Phibbs, officers who were sworn according to law.

These were all of the proceedings had this 20th day of February, 1993. Court thereupon adjourned. These minutes were read and approved for entry this 5 day of March, 1993.


Honorable Rex Henry Ogle, Judge

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE

MONDAY, FEBRUARY 22, 1993

Filed March, 19 1993
Helen K. Loneyday, Clk

Court met pursuant to adjournment, present and presiding The Honorable Rex Henry Ogle, Judge of Division III, of said Court, when the following proceedings were had and entered of record, to-wit:

STATE OF TENNESSEE

VS.

No. 5033 and 5035

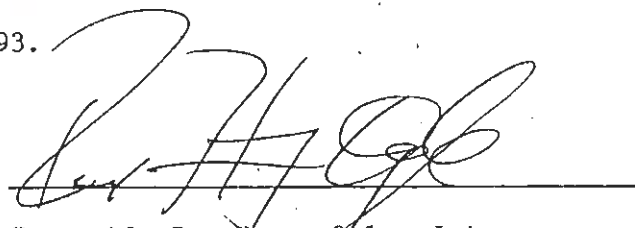
GARY WAYNE SUTTON, ALIAS and

JAMES ANDERSON DELLINGER, ALIAS

Came the District Attorney General and the Defendant, Gary Wayne Sutton, in person with his attorneys, David W. Webb and Zane Daniel and the Defendant, James Anderson Dellinger, in person with his attorneys, Ed Miller and Susanna Laws Thomas, and the same officers in charge of the same jury who were respited and sequestered at the hour of adjournment on Saturday, and the trial was continued.

The jury having heard only part of the proof and the hour of adjournment having arrived, were respited and sequestered in the custody of Mrs. Velma Phibbs and Jack Phibbs, officers who were sworn according to law.

These were all of the proceedings had this 22nd day of February, 1993. Court thereupon adjourned. These minutes were read and approved for entry this 5 day of March, 1993.



Honorable Rex Henry Ogle, Judge

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE

TUESDAY, FEBRUARY 23, 1993

*Filed March 19, 1993
Helen K. Loneday, Clerk*

Court met pursuant to adjournment, present and presiding The Honorable Rex Henry Ogle, Judge of Division III of said Court, when the following proceedings were had and entered of record, to-wit:

STATE OF TENNESSEE

VS.

No. 5033 and 5035

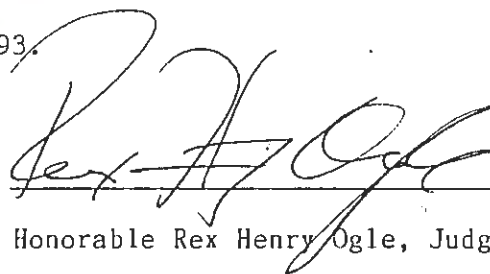
GARY WAYNE SUTTON, ALIAS and

JAMES ANDERSON DELLINGER, ALIAS

Came the District Attorney General and the Defendant, Gary Wayne Sutton, in person with his attorneys, David W. Webb and Zane Daniel and the Defendant, James Anderson Dellinger, in person with his attorneys, Ed Miller and Susanna Laws Thomas, and the same officers in charge of the same jury who were respited and sequestered at the hour of adjournment yesterday, and the trial was continued.

The jury having heard only part of the proof and the hour of adjournment having arrived, were respited and sequestered in the custody of Ms. Velma Phibbs and Jack Phibbs, officers who were sworn according to law.

These were all of the proceedings had this 23rd day of February, 1993. Court thereupon adjourned. These minutes were read and approved for entry this 5 day of March, 1993.


Honorable Rex Henry Ogle, Judge

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE

WEDNESDAY, FEBRUARY 24, 1993

*Filed March 19, 1993
Helen K. Hunsley, Cl*

Court met pursuant to adjournment, present and presiding the Honorable Rex Henry Ogle, Judge of Division III of said Court, when the following proceedings were had and entered of record, to-wit:

STATE OF TENNESSEE

VS.

No. 5033 and 5035

GARY WAYNE SUTTON, ALIAS and

JAMES ANDERSON DELLINGER, ALIAS

Came the District Attorney General and the Defendant, Gary Wayne Sutton, in person with his attorneys, David W. Webb and Zane Daniel and the Defendant, James Anderson Dellinger, in person with his attorneys, Ed Miller and Susanna Laws Thomas, and the same officers in charge of the same jury who were respited and sequestered at the hour of adjournment yesterday, and the proof in this matter continued.

The arguments of counsel were had, the jury charged, and the alternate jurors were dismissed. The jury then retired to consider its verdict.

Thereafter the jury returned into open court and reported their verdict. The jury unanimously found the Defendant, Gary Wayne Sutton and the Defendant, James Anderson Dellinger, guilty of first degree murder and arson.

Thereupon the Court commenced the bifurcated proceeding mandated by law to determine the appropriate punishment for the conviction of first degree murder in a secondary proceeding devoted to that exclusive issue. Following instructions by the Court, opening statements by the attorneys, stipulated facts, and evidence introduced the jury was charged to further inquire and determine the appropriate punishment, life or death on the first degree murder conviction. Thereafter the jury retired in the company of the same officers to further consider their verdict.

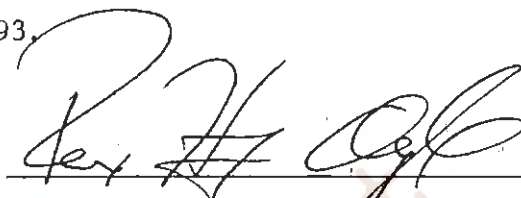
The jury then reported in open court that they had reached a verdict. The jury reported in the presence of the District Attorney General, the Defendants, and their attorneys in writing that they had unanimously found that the punishment in the first degree murder would be life imprisonment.

Thereupon the Court ordered, adjudged, and decreed on the jury

Courtesy of
Time of Death Podcast
by Beth Braden

verdict in this bifurcated trial that the Defendants, Gary Wayne Sutton and James Anderson Dellinger, were guilty of murder in the first degree and as punishment therefore shall be incarcerated for life in the state penitentiary. If is further adjudged by the Court that the Defendants are guilty of arson and as punishment thereto shall receive a sentence of two years to run consecutive to their life sentence.

These were all of the proceedings had this 24th day of February, 1993. Court thereupon adjourned. These minutes were read and approved for entry this 5 day of March, 1993.



Honorable Rex Henry Ogle, Judge

Courtesy of
Time of Death Podcast
by Beth Braden

Courtesy of
Time of Death Podcast
by Beth Braden

IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

JAMES DELLINGER

AT SEVIERVILLE
CIRCUIT COURT
FILED
HOUR 12:45 P. M
DATE: MAR 22 1993
Edward C. Miller
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.
~~MOTION FOR RETURN OF PROPERTY~~

NO. 5035 & 5036

Comes the defendant, by and through counsel, and hereby moves this Honorable Court to issue an order granting the return of his property not used or otherwise held as evidence against him and in support would show the court as follows:

1. That several guns and the defendant's boots were confiscated from the defendant during the search of his property and his arrest pursuant to his trial for first degree murder.

2. That several of the guns and the boots were not used as evidence against the defendant in Sevier County and there is no valid purpose for the state maintaining possession of these items.

Respectfully submitted

Edward C. Miller

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

CERTIFICATE OF SERVICE

I certify that I have sent a copy of the foregoing to the Mr. Al Schmutzer, District Attorney for Sevier County, Tennessee, this the 19th day of March, 1993.

Edward C. Miller

IN THE CIRCUIT COURT OF SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

VS.

JAMES DELLINGER

CIRCUIT COURT	
FILED	
HOOR	<u>2:00</u> P.M.
DATE: MAR 23 1993	
<i>Steven H. Goudrey</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

NO. 5035,5036

MOTION FOR NEW TRIAL

Comes now the defendant, through counsel, and moves this Court for a new trial, and in support of this motion would show to this Court as follows:

1. The Trial Court erred in denying severance of his trial from that of Gary Wayne Sutton.

A. Defendant moved pre-trial for a severance of his trial from that of Gary Wayne Sutton, on the grounds that a joint trial was unfairly prejudicial to him. This motion was denied pre-trial.

B. Defendant Dellinger renewed his motion for severance during the course of the trial, when evidence was admitted which would be properly considered by the jury as to Gary Wayne Sutton, but not as to this defendant. Those motions and renewal of motions for severance were likewise denied.

C. Defendant renewed motion for severance after Gary Wayne Sutton's defense introduced as evidence a headlight taken from Sutton's Camaro. Sutton testified that he had replaced this headlight in his Camaro six months prior to the incident, but the headlight bore a manufacturer date indicating that it was not manufactured until approximately four days prior to the incident which forms the basis of this charge. Sutton's defense was obviously not credible, and the defendant was prejudiced by being tried with him. Motion for severance should have been granted after Sutton introduced the defense outlined above.

2. The Court erred in failing to strike the demand for death penalty.

A. The Trial Court erred in finding that the

enhancement factor listed by the State was applicable to the facts that the State was able to prove.

B. The Trial Court erred in failing to require the State to make a proffer of proof concerning the enhancement factor justifying the death penalty, and in allowing the State to merely summarize what anticipated testimony would be.

C. The Court erred in allowing the demand for death penalty to stand after the State's proffer of proof showed only that the victim was killed because she was allegedly looking for her brother. The facts as alleged by the State in the proffer of proof do not conform to the statutory enhancement factor which was the basis for the death penalty demand.

D. As a result of the Court's rulings, the defendant was tried before a death qualified jury, which unfairly enhanced the probability of conviction in a circumstantial case.

3. The Trial Court erred in failing to suppress statements given by the defendant and codefendant to various law enforcement personnel, when said statements were obtained unconstitutionally.

4. The Trial Court erred in ruling that the evidence of other bad acts was admissible under T.R.E. 404 (b). The other acts consisted of events in Blount County involving the death of Tommy Griffin and the alleged arson of his trailer in Sevier County. The Court made this ruling based on an improper proffer of proof by the State. The State was allowed to summarize anticipated testimony, rather than actually having a witness under oath testify so that the Court could properly rule on whether such evidence was relevant, and if relevant whether the evidence was admissible. Defendant would argue that the evidence of other crimes was irrelevant, and if deemed relevant was inadmissible due to its highly prejudicial character, as opposed to its limited probative value.

5. The Trial Court erred in excusing for cause jurors who indicated that they could not give the death penalty if they had any doubt of guilt.

6. The Court erred in ruling admissible a statement

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made by Tommy Griffin that he had been "in a fight with a friend." The Court erred in finding that this comment fell under startling event exception to the hearsay rule.

7. The Court erred in allowing into evidence certain shotgun shells taken from the home of Angie Gray, pursuant to a search warrant which the Court ruled to be unconstitutionally obtained. The Court ruled the shells admissible pursuant to a valid consent and inevitable discovery. The defendant would submit that there was no valid consent by Angela Gray, and that the inevitable discovery doctrine does not apply to this factual situation.

8. The Court erred in ruling admissible a statement made by Connie Branam as an exception to the hearsay rule.

9. The Court erred in refusing defendant's motion, pursuant to Brady, to obtain statements from the defendant's wife, finding that Brady only applied to information "within the exclusive control of the State." The defendant would show that said statements were within the exclusive control of the State and should properly have been provided to the defense as Brady material.

10. The Court erred in failing to grant defendant Dellinger a mistrial when the State failed to come forward with clear and convincing evidence of the arson of the trailer and the defendant's involvement with an alleged fight on Hunt Road in Blount County, when that evidence had been included in the State's proffer of proof.

11. The Trial Court erred in denying a motion for judgment of acquittal when the State failed to come forward with sufficient proof as to the victim's cause of death, the location of her death, or any proof of criminal agency.

12. The Court erred in failing to grant the defendant's motion for judgment of acquittal on the charge of first degree murder, in that the State did not produce any evidence of premeditation and deliberation as required by law.

Defendant reserves the right to amend or supplement
this motion prior to a hearing before the Court.

Respectfully Submitted:

Susanna Thomas
SUSANNA W. THOMAS
ASSISTANT PUBLIC DEFENDER
102 Mims Avenue
Newport, TN 37821
Phone: (615) 625-8353

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and accurate
copy of the foregoing upon Al Schmutzer, the District Attorney
General for the 4th Judicial District.

This the 23 day of March, 1993.

Susanna Thomas
SUSANNA W. THOMAS

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IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE *

PLAINTIFF *

VS. *

NO. 5033, 5034

GARY W. SUTTON *

DEFENDANT *

MOTION FOR NEW TRIAL

CIRCUIT COURT
FILED
HOUR 5:00 P. M.
DATE: MAR 24 1993
Shawn R. Housley
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

COMES THE DEFENDANT, Gary W. Sutton, by and through counsel, and moves the Court to grant him a new trial in the above styled causes, and in support of said Motion would show as follow:

1. The Court erred in granting the State's Motion to Consolidate the cases of the Defendants Gary W. Sutton and James Dellinger. Defendant Sutton avers that he filed a per-trial Motion for Severence and renewed same several times during the trial, which Motion this Court denied.

a) These Defendants were originally indicted separately, Defendant Sutton in cause #5033 for First Degree Murder and Arson of an automobile. The Defendant Dellinger in cause #5035 for First Degree Murder and Arson of an automobile. Defendant Sutton avers that the joinder of these cases for trial was so prejudicial to him to the extent that he did not receive a fair trial.

b) Specifically, certain evidence was introduced in the joint trial which was admissible only against the Co-defendant Dellinger, including but not necessarily limited to:

i) Co-defendant Dellinger's statement to Officer John Brown on February 15, 1992;

ii) Certain evidence seized at the Co-defendant's residence that linked the Co-defendant Dellinger to the murder of Tommy Griffin and Connie Branam.

c) Defendant Sutton would aver that this evidence would only be admissible against the Co-defendant Dellinger and

should not have been introduced as evidence against the Defendant Sutton. Defendant Sutton avers that this amounted to prejudicial joinder. Defendant Sutton further avers that the Court's limiting instructions to the Jury were ineffective to prevent any proof of the guilt of the Co-defendant, James Dellinger from influencing the minds of the jurors. Defendant Sutton therefor avers that separate trials were mandated.

d) Consolidation is improper in a case such as this where there is not overwhelming independent proof of guilt and the State's case was based on circumstantial evidence. Defendant Sutton avers that separate trials are mandated, and further avers that because the proof about James Dellinger's intent and motive, and the lack thereof as to Defendant Sutton, the guilt by association risk was increased greatly by a joint trial, all to the prejudice of this Defendant.

2. The Court erred in allowing the State to introduce proof of collateral criminal activity.

a) The State introduced proof in its case-in-chief regarding the burning of Tommy Griffin's trailer on February 21, 1992;

b) The State introduced proof of an alleged altercation between each of the Defendants and Tommy Griffin on Hunt Road off of Alcoa Highway in Blount County, Tennessee;

c) The State introduced proof regarding an alleged fight between an individual named Bill Griffin and the Defendant Sutton; and

d) The State introduced proof regarding the murder of Tommy Griffin in Blount County on February 21, 1992.

Defendant Sutton avers that the "other crimes evidence" did not show or tend to prove anything material or relevant to the case at bar. Defendant Sutton avers the Jury's primary task was to determine Gary Sutton's role in Connie

Branam's death and that the evidence of the events of February 21, 1992 regarding Tommy Griffin, and other matters served only to confuse, mislead and inflame the prejudices and passions of the Jury, all of which denied Defendant Sutton a fair trial.

Defendant Sutton avers the "other crimes evidence" was irrelevant and secondly, if even remotely relevant, said evidence was unfairly prejudicial. The Court further erred in failing to conduct a "jury-out" hearing regarding the "other crimes evidence" pursuant to State vs. Parton, 694 S.W.2d 299 (Tenn. 1985).

The Court erred in failing to grant a mistrial when the State failed to prove by clear and convincing evidence Defendant Sutton's involvement in the collateral criminal activity.

3. The Court erred in overruling the Defendant's Motion to Suppress testimony concerning alleged statements and admissions the Defendant Sutton allegedly made to Tennessee Bureau of Investigation Agent David Davenport on March 9, 1992.

a) The Defendant Sutton would show that said statements or alleged admissions were obtained after this Defendant had invoked his right to counsel on February 28, 1992. The statements or alleged admissions were obtained after Defendant's counsel obtained the promise from Detective Jim Widener that no other interrogation would be conducted by any law enforcement agency as to this Defendant.

b) Defendant Sutton would further show that testimony in this record reveals that it was physically impossible for this Defendant to be in the interrogation room when the agent testified that he took this Defendant's statement. This alleged statement elicited that this Defendant was with the Co-Defendant Dellinger at all times and that he had one headlight missing. There was no other independent proof of

these two facts that the agent testified that this Defendant made to him on March 9, 1992.

c) The facts clearly show that this Defendant refused to waive his right to the presence of counsel on March 9, 1992 and this basically reduced a critical item of evidence to a swearing contest between a supposedly honorable T.B.I. agent and a supposedly dishonorable defendant. Defendant Sutton avers that due to the suspect circumstances of this alleged statement that the same was obtained by fraud and certainly was not voluntarily made nor initiated by this Defendant.

4. The Court erred in allowing this Defendant's statements of February 25, 1992 and February 28, 1992 to be introduced that specifically involved facts incident to either the arson of Tommy Griffin's trailer on February 21, 1992 or facts incident to the death of Tommy Griffin on February 21, 1992 in that same were irrelevant, immaterial and highly prejudicial.

5. This Defendant, by virtue of the Court's rulings regarding joinder and admissibility of "other crimes evidence", was forced to file a Motion to join in the Co-defendant's previously filed Motion to Suppress certain evidence seized at the Co-defendant Dellinger's residence by virtue of a search warrant. Therefore, this Defendant avers that the Court erred in overruling the Co-defendant's Motion to Suppress evidence seized from the Co-defendant's residence in that the search warrant was defective; there was no consent to search given and this evidence would not have been inevitably discovered.

6. The Court erred in failing to order the State to produce the entire statement of Ms. Linda Dellinger regarding whether or not she gave consent to search to the officers. This is not "Jenks" material but goes to the issue of consent of the search and should have been provided.

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7. The Court erred in not allowing the stipulation of August 25, 1992 to be introduced into evidence.

8. The Court erred by allowing Dr. William Bass, a forensic anthropologist, to testify as to the cause of the fire being arson in that he was not qualified to do so. Defendant avers that Dr. Bass was only qualified to opinion as to cause of death and he could not give an opinion that the cause of Connie Branam's death was by a criminal instrumentality.

9. The Court erred in failing to grant the Defendant's Motion for Judgment of Acquittal at the end of the State's proof and again erred in failing to grant the Motion for Judgment of Acquittal at the end of all proof for reason that the State failed to prove corpus delicti.

10. The Court erred in failing to grant the Defendant's Motion for Judgment of Acquittal at the end of the State's proof. The Court again erred in failing to grant the Motion for Judgment of Acquittal at the end of all proof for reason that the State failed to produce evidence sufficient to sustain a conviction in that the State did not establish the elements of the offense of First Degree Murder nor did the State establish the complicity of this Defendant in the crime.

11. The Court erred in failing to strike the demand for death penalty pre-trial; erred in failing to grant the Defendant's Motion for Judgment of Acquittal at the end of the State's proof and again erred in failing to grant the Motion for Judgment of Acquittal at the end of all proof for reason that the State failed to prove the aggravating factor of trying to murder a witness.

a) There was no proof, direct or circumstantial, that Connie Branam knew her brother was dead at the time she went looking for him; no proof that she witnessed his murder; no proof that she knew of his murder; no proof that she

witnessed any criminal act of this Defendant. Furthermore, the State's proof has shown that it was James Dellinger's intent to "wipe out the whole hill of Griffins" and not to murder a witness.

b) The Court erred in failing to require the State to make a testimonial proffer of proof concerning the aggravating factor justifying the death penalty and in allowing the State to merely summarize what anticipated testimony would be.

c) The Court's ruling forced the Defendant Sutton to be tried before a death penalty qualified jury which unfairly enhanced the probability of conviction in a circumstantial evidence case.

12. The Court erred in failing to grant Defendant's Motion for Change of Venue at the end of the second day of jury selection.

13. The Court erred in failing to issue a cautionary instruction to the Jury regarding evidence that a headlight may have been tampered with by someone other than this Defendant.

14. The Court erred in allowing certain hearsay statements of the victim into evidence in that same was gross hearsay and furthermore, that the same violated this Defendant's right to confrontation.

15. The Court erred in allowing into evidence a hearsay statement allegedly made by Tommy Griffin to officers at the time when he was allegedly put out of the car on Hunt Road in Blount County, Tennessee.

16. The Court erred in allowing testimony of Barbara Gordon regarding events occurring Sunday morning, February 23, 1992 around 10:30 or 11:00 a.m. in that same was irrelevant and immaterial and highly prejudicial.

17. The Court erred in imposing a consecutive sentence in this cause.

18. The Court erred in excusing for cause jurors who indicated that they could not impose the death penalty if they had any doubt of guilt.

19. The Court erred in excusing for cause jurors who indicated that they would have problems in imposing the death penalty based on a circumstantial evidence conviction.

FOR THE REASONS above stated, the Defendant Sutton avers he was denied a fair trial.

DEFENDANT SUTTON reserves the right to amend this Motion and hereby adopts the Co-defendant's issues raised in Co-defendant's Motion for New Trial in that these cases were tried jointly.

Respectfully submitted this the 24th day of March
1993.

GARY W. SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY

ZANE DANIEL, ATTORNEY

FOR DEFENDANT 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 by Hand Delivery.

THIS the 24 day of March, 1993.

DAVID W. WEBB, ATTORNEY

mar93\b\sut-nw.trl

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IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

CIRCUIT COURT FILED	
HOUR	8:45 A.M.
DATE: APR 19 1993	
: <i>Helen F. Loveday</i> :	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

VS.

NO. 5035 & 5036

JAMES DELLINGER, ALIAS

RESPONSE TO MOTION FOR RETURN OF PROPERTY

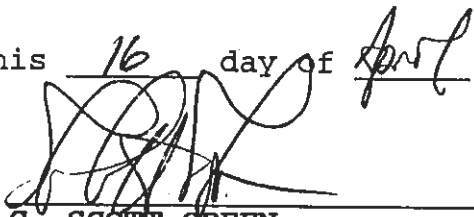
Comes the State and would object to the return of property of this defendant not introduced previously. For grounds the State would show the following:

1. That this defendant stands indicted, in Sevier County Case #5036, for Arson. That the items in possession of the various law enforcement agencies that investigated the captioned causes are subject to introduction in #5036;

2. That this defendant stands indicted in Blount County Criminal Court for First Degree Murder. That the items in possession of the various law enforcement agencies that investigated these causes are subject to introduction in the Blount County case.

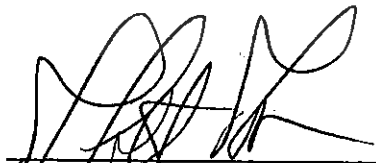
PREMISES CONSIDERED, the State objects to the return of this defendant's property.

RESPECTFULLY SUBMITTED this 16 day of April, 1993.


G. SCOTT GREEN
ASSISTANT DISTRICT ATTORNEY

CERTIFICATE OF SERVICE

I, G. Scott Green, Assistant District Attorney General for the Fourth Judicial District, hereby certify that a true and exact copy of the foregoing Notice was mailed this the 16 day of April, 1993 to the Attorney of Record, Mr. Ed Miller, P.O. Box 416, Dandridge, TN 37725, Mr. David Webb, 140A Court Street, Sevierville, TN 37862 and Ms. Helen Loveday, Circuit Court Clerk, Courthouse, Sevierville, TN 37862.


G. SCOTT GREEN
ASSISTANT DISTRICT ATTORNEY

CIRCUIT COURT
FILED
HOUR 10:10 A. M
DATE: **MAY 13 1978**
COUNTY, TENNESSEE
CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

IN THE CIRCUIT COURT FOR SEVIER	COUNTY, TENN.
STATE OF TENNESSEE	CIRCUIT COURT SEVIER COUNTY
PLAINTIFF	
VS.	NO. 5033, 5034
GARY WAYNE SUTTON	
DEFENDANT	

MOTION FOR RETURN OF PROPERTY

COMES THE DEFENDANT, by and through counsel, and hereby moves this Honorable Court to issue an Order granting the return of his property not used or otherwise held as evidence against him and in support would show the Court as follows:

1. That the Defendant's boots and other items of personal property were confiscated from the Defendant during the course of the investigation of this matter.
2. That the boots and other items of personal property were not used as evidence against the Defendant in Sevier County and there is no valid purpose for the State maintaining possession of these items.

RESPECTFULLY SUBMITTED:

THIS the 12 day of May, 1993.

GARY WAYNE SUTTON, DEFENDANT

BY:

DAVID W. WEBB, ATTORNEY FOR DEFENDANT

ATTORNEY'S CERTIFICATE OF SERVICE

I, David W. Webb, Attorney, do certify that I have this date sent a true and exact copy of the foregoing Motion for Return of Property to the District Attorney General's Office, Third Floor, County Courthouse, Sevierville, TN. 37862 by Hand Delivery.

THIS the 12 day of May, 1993.

DAVID W. WEBB, ATTORNEY

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511

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

VS.

GARY WAYNE SUTTON, ALIAS

CIRCUIT COURT FILED	
HOUR	: 3:05 M
DATE: MAY 24 1993	
<i>Helen F. Loveday</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

NO. 5033 & 5034

RESPONSE TO MOTION FOR RETURN OF PROPERTY

Comes the State and would object to the return of property of this defendant not introduced previously. For grounds the State would show the following:

1. That this defendant stands indicted, in Sevier County Case #5036, for Arson. That the items in possession of the various law enforcement agencies that investigated the captioned causes are subject to introduction in #5036;
2. That this defendant stands indicted in Blount County Criminal Court for First Degree Murder. That the items in possession of the various law enforcement agencies that investigated these causes are subject to introduction in the Blount County case.

PREMISES CONSIDERED, the State objects to the return of this defendant's property.

RESPECTFULLY SUBMITTED this 24 day of May, 1993.

[Signature]
G. SCOTT GREEN
ASSISTANT DISTRICT ATTORNEY

CERTIFICATE OF SERVICE

I, G. Scott Green, Assistant District Attorney General for the Fourth Judicial District, hereby certify that a true and exact copy of the foregoing Notice was mailed this the 24 day of May, 1993 to the Attorney of Record, Mr. Ed Miller, P.O. Box 416, Dandridge, TN 37725, Mr. David Webb, 140A Court Street, Sevierville, TN 37862 and Ms. Helen Loveday, Circuit Court Clerk, Courthouse, Sevierville, TN 37862.

[Signature]
G. SCOTT GREEN
ASSISTANT DISTRICT ATTORNEY

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

PLAINTIFF

VS.

GARY WAYNE SUTTON

DEFENDANT

CIRCUIT COURT	
FILED	
HOUR	2:15 P M
DATE: JUL 23 1993	
NO. 5033, 5034	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

MOTION

COME THE DEFENDANT, Gary Wayne Sutton, by counsel, and moves this Honorable Court to declare him indigent as regards all further proceedings in this cause.

RESPECTFULLY SUBMITTED:

THIS the 23rd day of July, 1993.

GARY WAYNE SUTTON, DEFENDANT

BY:

David W. Webb

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 District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 by U.S. Mail.

THIS the 23rd day of July, 1993.

David W. Webb

DAVID W. WEBB, ATTORNEY

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513

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

PLAINTIFF

VS.

GARY W. SUTTON

DEFENDANT

CIRCUIT COURT FILED HOUR <u>2:15p.m.</u> DATE: JUL 23 1993 5033, 5034 <i>Thomas H. Garrison</i> CIRCUIT COURT CLERK SEVIER COUNTY, TENN. AFFIDAVIT

COMES the Defendant/Affiant, Gary W. Sutton, in the captioned matter, and after being duly sworn according to law, says as follows:

1. I am the Defendant in the captioned cause.
2. That I, Gary Sutton, am currently confined at the B.M.S.P.
3. That I am unemployed, without any income whatsoever having been unemployed since March 5, 1992.
4. That I have no present income. I have not received any income since before March 5, 1992.
5. That I do not own any real property.
6. That I do not own any personal property other than my personal items and effects and clothing which have little or no value.
7. That I owe several debts which are outstanding and which I am unable to pay.
8. That because of my poverty I am unable to pay the costs of my appeal or to give security therefor; nor am I able to employ counsel to represent me on appeal.

THIS the 21 day of MARCH, 1993.

Gary W. Sutton
GARY W. SUTTON, AFFIANT

STATE OF TENNESSEE
COUNTY OF SEVIER

I hereby declare under the penalty of perjury that the foregoing Affidavit is true, correct and complete and that I am financially unable to bear the cost of this cause.

Sworn and Subscribed before me on this the 21 day of MARCH, 1993.

Gary W. Sutton
GARY WAYNE SUTTON
Constantine J. King
NOTARY PUBLIC

My Commission Expires: 5-14-96

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IN THE ~~CIRCUIT COURT FOR~~ SEVIER COUNTY, TENNESSEE
CIRCUIT COURT
STATE OF TENNESSEE FILED
HOUR 2:15 P. M
PLAINTIFF
VS. DATE: JUL 23 1993 NO 5033, 5034
GARY W. SUTTON *David W. Webb*
DEFENDANT CIRCUIT COURT CLERK
SEVIER COUNTY, TENN.

AFFIDAVIT

COMES the Affiant, David W. Webb, and after being duly sworn according to law, states:

1. I am trial counsel for Gary Wayne Sutton, who seeks to appeal his conviction in this cause on Wednesday, February 24, 1993 due to this Court's denial of the Motion for New Trial which was filed on the 24th day of March 1993 and heard on the 23rd day of July, 1993.

2. Mr. Sutton is presently in the custody of the State of Tennessee and is not immediately available to sign an in forma pauperis affidavit. Such an affidavit has been sent to Mr. Sutton by me and will be forwarded to this Court immediately upon receipt. A copy of the affidavit to be signed by Mr. Sutton is attached hereto.

3. I am informed and believe that because of his poverty, Mr. Sutton is unable to pay the costs of this cause or to give security for same.

4. I am informed and believe that because of this poverty, Mr. Sutton is unable to retain counsel to assist him on appeal.

5. I believe Mr. Sutton is entitled redress in this cause for the reasons set forth in the Motion for New Trial and certainly believe that Mr. Sutton is entitled to proceed on appeal and would request this Court to declare Mr. Sutton indigent because of his poverty; and to then appoint counsel to assist Mr. Sutton on appeal; and to otherwise allow the appeal to proceed without prepayment of costs; and to otherwise provide this Defendant and counsel with a transcript of the entire proceedings without cost to this Defendant.

THIS the 23rd day of July, 1993.

David W. Webb
DAVID W. WEBB, AFFIANT

STATE OF TENNESSEE
COUNTY OF SEVIER

I hereby declare under the penalty of perjury that the foregoing Affidavit is true, correct and complete to the best of my knowledge. THIS the 23 day of July, 1993.

David W. Webb
DAVID W. WEBB

Sworn and Subscribed before me on this the 23 day of July, 1993.

Constance A. King
NOTARY PUBLIC

My Commission Expires: 5-14-96

mar93\b\dww-st.aff

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

*

*

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*

NO. 5033, 5034

CIRCUIT COURT FILED	
HOUR	2:15 P.M.
DATE: JUL 23 1993	
<i>David W. Webb</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

MOTION FOR PERMISSION TO
WITHDRAW AS COUNSEL OF RECORD

COME David W. Webb and Zane Daniel, Attorneys, counsel of record for Defendant in the captioned matter, and pursuant to Rule 37 (e) of the Tennessee Rules of Criminal Procedure, and for their Motion for Permission to Withdraw as Counsel of Record in this cause, says as follows:

1. The Movants, David W. Webb and Zane Daniel, were retained by the Defendant to represent him incident to the proceedings in the Circuit Court level of Sevier County, Tennessee. However, no financial, contractual or other arrangements have been made to represent the Defendant in the event the Defendant was convicted and desired to appeal the conviction.

2. The Movants have represented the Defendant to the best of their ability through the Motion for New Trial, which was denied by this Court on the 23rd day of July, 1993. Therefore, the Movants have fulfilled their contractual and ethical obligations to the Defendant, and their contract of employment has now terminated.

WHEREFORE, the Movants, David W. Webb and Zane Daniel, Attorneys, respectfully move this Court for permission to withdraw as counsel of record for the Defendant in this cause pursuant to Rule 37(e) of the Tennessee Rules of Criminal Procedure and the law.

THIS the 23rd day of July, 1993.

David W. Webb

DAVID W. WEBB, ATTORNEY

ATTORNEY'S CERTIFICATE

I, DAVID W. WEBB, do certify that I have this date sent a true and exact copy of the foregoing Motion for Permission to Withdraw to the District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 by U.S. Mail.

THIS the 23rd day of July, 1991.

David W. Webb

DAVID W. WEBB, ATTORNEY

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HONORABLE REX HENRY OGLE, PRESIDING

SEVIER COUNTY CIRCUIT COURT

FRIDAY, JULY 23, 1993

Court met pursuant to adjournment, present and presiding The Honorable Rex Henry Ogle, Judge of Division III of said Court, when the following proceedings were had and entered of record, to-wit:

STATE

VS.

DAVID BAILEY

NO: 4639

This cause was heard on a Motion for New Trial which was considered by the Court and overruled.

STATE

VS.

GARY WAYNE SUTTON

NO: 5033, 5034

This cause was heard on a Motion for New Trial which was considered by the Court and overruled. It appearing the defendant is indigent, and after due inquiry made, the Court appointed Mr. David Webb and Mr. Zane Daniel to represent the defendant as provided by law for the purpose of appeal.

STATE

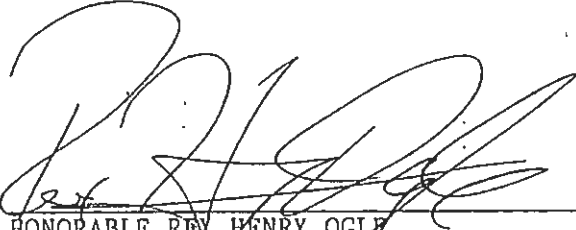
VS.

JAMES ANDERSON DELLINGER

NO: 5035, 5036

This cause was heard on a Motion for New Trial which was considered by the Court and overruled.

These were all of the proceedings had this 23rd day of July, 1993.
Court thereupon adjourned. These minutes were read and approved for entry the 30 day of July, 1993.


HONORABLE REX HENRY OGLE
CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE *

PLAINTIFF/RESPONDENT *

VS. *

NO. 5033, 5034

GARY W. SUTTON *

DEFENDANT/APPELLANT *

NOTICE OF APPEAL

TO: SEVIER COUNTY CIRCUIT COURT
CRIMINAL DIVISION

and
ATTORNEY GENERAL'S OFFICE
COUNTY COURTHOUSE
SEVIER COUNTY, TENNESSEE

CIRCUIT COURT FILED	
HOUR	<u>2:15 P</u> M
DATE: JUL 23 1993	
<i>David W. Webb</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

IN ACCORDANCE with T.R.A.P.,

NOTICE IS HEREBY GIVEN that in the above styled cause, the Defendants/Appellant, Gary Wayne Sutton, files this his Notice of Appeal, as to and from the judgment of the Court entered in the Circuit Court for Sevier County, Tennessee, on February 24, 1993 relative to the captioned causes.

THIS the 23rd day of July, 1993.

GARY WAYNE SUTTON, DEFENDANT

BY: David W. Webb

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 Notice of Appeal to the Attorney General's Office, Third Floor, County Courthouse, Sevierville, TN. 37862 and Attorney General's Office, 450 James Robertson Parkway, Nashville, TN. 37219 and to the Court Reporter, Jenny Brookshire, 1650 Oak Street, Morristown, TN. 37813, by United States Mail.

THIS the 23rd day of July, 1993.

David W. Webb
DAVID W. WEBB, ATTORNEY

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Entered Minute Book A-9 Page 211

IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

JAMES DELLINGER

NO. 5035 & 5036

NOTICE OF APPEAL

Comes the defendant, by and through counsel, and gives notice that he will appeal his conviction and sentence for first degree murder and arson to the Tennessee Court of Criminal Appeals at Knoxville.

Respectfully submitted,

Edward C. Miller

EDWARD C. MILLER
PUBLIC DEFENDER
Fourth District
P. O. Box 416
Dandridge, TN 37725
615-397-0108

CIRCUIT COURT	
FILED	
HOUR	11:00 A. M.
DATE: JUL 29 1993	
<i>[Signature]</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing to Mr. David Webb, attorney-at-law, Ms. Jeannie Brookshire, court reporter, and the Office of the State Attorney General at 450 James Robertson Parkway, Nashville, TN 37219-5025, on July 26, 1993.

Edw C. Miller

Entered Minute Book A-9 Page 217

521

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IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

VS.

GARY WAYNE SUTTON, ALIAS and
JAMES ANDERSON DELLINGER, ALIAS

NO. 5033 & 5035

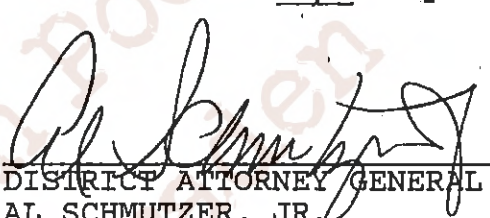
*Filed Aug. 4, 1993
Helen K. Housley, Clerk
-md.*

MOTION TO REMOVE EVIDENCE

Comes the State and respectfully moves this Honorable Court to allow the State to withdraw the items into evidence in this cause as evidenced by Exhibit 1 to this Motion in order that the same items may be filed in the murder case against the two defendants in Blount County.

The State requests that the evidence be replaced with photographs and copies of these items.

RESPECTFULLY SUBMITTED this the 4 day of August, 1993.

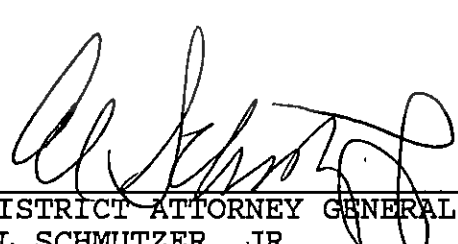

DISTRICT ATTORNEY GENERAL
AL SCHMUTZER, JR.

CERTIFICATE

I, Al Schmutzer, Jr., District Attorney General for the Fourth Judicial District of the State of Tennessee, do hereby certify that a true and exact copy of the foregoing Motion to Remove Evidence was mailed to each of the following:

1. Mr. David W. Webb
Attorney At Law
140A Court Avenue
Sevierville, TN 37862-3512,
2. Mr. W. Zane Daniel
Daniel & Oberman
Nations Bank
550 W. Main Ave., Ste 950
Knoxville, TN 37902, and
3. Mr. Edward Miller
Public Defender
Fourth Judicial District
P. O. Box 416
Dandridge, TN 37725,

this 4 day of August, 1993.


DISTRICT ATTORNEY GENERAL
AL SCHMUTZER, JR.

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE)

VS.)

NO. 5033 & 5035

GARY WAYNE SUTTON, ALIAS and)
JAMES ANDERSON DELLINGER, ALIAS)

ORDER

Upon Motion of the State and for good cause shown IT IS
ACCORDINGLY ORDERED that the evidence setout in Exhibit 1 to the
State's Motion shall be removed from evidence and replaced with
photographs and copies and turned over to the Blount County
Sheriff's Department to be used in the Blount County murder
trial.

ENTER this the 5 day of August, 1993.

CIRCUIT COURT FILED	
HOUR _____	M _____
DATE: AUG 5 1993	
<i>Glenn H. Gaudin</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

Rex Henry Oglet
REX HENRY OGLET, CIRCUIT JUDGE

Entered Minute Book A-9 Page 333 + 334

~~333~~
522

CIRCUIT COURT	
FILED	
HOUR	3:00 M
DATE: AUG 20 1993	
<i>David W. Webb</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

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

ORDER PERMITTING COUNSEL TO WITHDRAW,
 APPOINTING COUNSEL TO REPRESENT THE DEFENDANT
 INCIDENT TO HIS APPEAL, AND
 PROVIDING THE DEFENDANT AND HIS COUNSEL WITH
 A TRANSCRIPT.

THIS CAUSE came to be heard on this the 23 day of July, 1993; upon the Motion of David W. Webb and Zane Daniel, Attorneys, the Movants, for permission to withdraw as counsel of record in this case, pursuant to Rule 37(e) of the Tennessee Rules of Criminal Procedure; the Motion of the Defendant with attached Affidavits to declare him indigent; the statement of counsel; and the entire record as a whole, from all of which it satisfactorily appears to the Court the Motion of David W. Webb and Zane Daniel, Movants, is well-taken and should be granted, good cause being shown; that the Defendant Gary Wayne Sutton is hereby declared indigent within the meaning of the law, and therefore, is unable to employ private counsel to represent him in the Court of Criminal Appeals, or a transcript of the proceedings in this cause; that David W. Webb and Zane Daniel were trial counsel for the Defendant and are most familiar with the proceedings in this cause, that continuity in representation is favored and there is no compelling reason why David W. Webb and Zane Daniel, Attorneys, cannot represent the Defendant in perfecting his appeal in this Court and in the Court of Criminal Appeals, and thus;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion of the Movants, David W. Webb and Zane Daniel, be and

Entered Minute Book A-9 Page 420 + 421

the same is hereby granted, and David W. Webb and Zane Daniel, be and they are hereby permitted to withdraw as counsel of record for the Defendant, Gary Wayne Sutton, in this cause.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Gary Wayne Sutton, is declared to be indigent.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that David W. Webb and Zane Daniel, be and they are hereby appointed to represent the Defendant, Gary Wayne Sutton, incident to the perfection of the Defendant's appeal in this Court and all proceedings in the Court of Criminal Appeals at Knoxville, Tennessee.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in view of the indigence of the Defendant, Gary Wayne Sutton, the Official Court Reporter of this Court shall transcribe the proceedings designated by the Defendant pursuant to Rule 24 of the Tennessee Rules of Appellate Procedure without cost to the Defendant.

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R THIS the 19 day of Aug, 1993.


JUDGE

APPROVED:


DAVID W. WEBB


ZANE DANIEL

ATTORNEYS FOR DEFENDANT, GARY WAYNE SUTTON
ATTORNEY'S CERTIFICATE OF SERVICE

I, DAVID W. WEBB, do certify that I have this date sent a true and exact copy of the foregoing Order Permitting Counsel to Withdraw, Appointing Counsel to Represent the Defendant and Providing the Defendant with a Transcript to the District Attorney General, Third Floor, County Courthouse, Sevierville, TN. 37862 and to the Official Court Reporter, Ms. Jenny Brookshire, 1650 Oak Street, Morristown, TN. 37813 by U.S. Mail.

THIS the 6th day of August, 1993.


DAVID W. WEBB, ATTORNEY

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421

CIRCUIT COURT FILED	
HOUR	3:45 P.M.
DATE: AUG 26 1993	
<i>Helmi F. Gooden</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

IN THE CRIMINAL/CIRCUIT COURT FOR SEVIER COUNTY
STATE OF TENNESSEE *
PLAINTIFF *
VS. * NO. 5033, 5034
GARY WAYNE SUTTON *
DEFENDANT *

MOTION FOR NEW TRIAL ON BASIS OF NEWLY DISCOVERED EVIDENCE
COMES THE DEFENDANT, Gary Wayne Sutton, by and through
counsel and hereby moves this Honorable Court to grant the
Defendant a new trial based on newly discovered evidence and
would show the Court as follows:

1. That on August 23, 1993 counsel for Defendant
received a letter from Assistant Attorney General G.Scott
Green, a copy of which is attached hereto, indicating a
substance of some newly discovered evidence.

2. That evidence was discovered by Assistant District
Attorney General G.Scott Green on July 30, 1993 during the
probation revocation hearing of Bill Cogdill. At that
hearing Joyce Tipton testified that Bill Cogdill told her,
"If you show up for court, I'll burn you up in your car just
like I did Connie."

RESPECTFULLY SUBMITTED;

THIS the 26th day of August, 1993.

GARY WAYNE SUTTON, DEFENDANT

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

Zane Daniel by D.W. Webb
ZANE DANIEL, ATTORNEY FOR
DEFENDANT

ATTORNEY'S CERTIFICATE

I, DAVID W. WEBB, Attorney, do certify that I have sent
a true and exact copy of the foregoing Motion to Assistant
Attorney General, G.Scott Green, Third Floor, County
Courthouse, Sevierville, TN. 37862 and to Mr. Ed Miller,
Public Defender, P.O. Box 416, Dandridge, TN. 37725 by U.S.
Mail.

THIS the 26th day of August, 1993.

David W. Webb
DAVID W. WEBB, ATTORNEY

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IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

JAMES ANDERSON DELLINGER

CIRCUIT COURT FILED	
HOUR <u>11:30</u>	M
DATE: <u>AUG 26 1993</u>	NO
<i>[Signature]</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

5035

5036

MOTION FOR NEW TRIAL ON THE BASIS OF NEWLY DISCOVERED EVIDENCE

Comes the defendant, James Anderson Dellinger, by and through counsel and hereby moves this Honorable Court to grant the defendant a new trial based on newly discovered evidence and would show the Court as follows:

1. That on August 23, 1993, counsel for the defendant received a letter from Asst. District Attorney General Scott Green, a copy of which is attached to this motion, indicating a substance of some newly discovered evidence.

2. That evidence was discovered by Asst. District Attorney General Scott Green on July 30, 1993, during the probation revocation hearing of Bill Cogdill. At that hearing Joyce Tipton testified that Bill Cogdill told her, "If you show up for court, I'll burn you up in your car just like I did Connie."

Respectfully submitted,

Edward C. Miller

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

CERTIFICATE OF SERVICE

I certify that I have sent a copy of the foregoing to the Mr. G. Scott Green, Asst. District Attorney for Sevier County, Tennessee, and to Mr. David Webb, attorney-at-law, this the 24th day of August, 1993..

Edward C. Miller

REPORT OF TRIAL JUDGE IN CAPITAL CASES*

IN THE Circuit COURT OF Sevier COUNTY

STATE OF TENNESSEE

VS.

Gary Wayne Sutton
(Defendant)

CIRCUIT COURT	
FILED	Case No. <u>5033, 5034</u>
HOUR <u>10:35 A.</u>	M
DATE: <u>AUG 26 1993</u>	
Place of Death ()	
or	
Life Imprisonment ☒	
CIRCUIT COURT CLERK	
SEVIER COUNTY, TENN.	

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. Brief summary of the facts of the homicide, including the means used to cause death:

Defendants gained the confidence of the victim by saying they would help her find her brother whom they very likely had already killed. They took victim to remote area, shot her, placed her body in her car and set it afire

2. How did the defendant plead? Guilty () Not guilty ☒

3. Was guilt determined with or without a jury? With ☒ Without ()

4. Separate Offenses:

a. Were other offenses tried in the same trial? Yes ☒ No ()

b. If yes, list those offenses, disposition, and punishment:

Arson of personal property

5. Co-Defendants:

a. Were there any co-defendants in the trial? Yes ☒ No ()

b. If yes, what conviction and sentence were imposed on the co-defendants?

Murder I - Life

Arson - 2 years - Consecutive

c. Nature of the co-defendants' role in offense:

Co-equal

* A separate report must be submitted for each defendant convicted under T.C.A. 39-2-202 as amended by Ch. 51, Public Acts of 1977, irrespective of punishment.

d. Any further comments concerning co-defendants:

6. Other Accomplices:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant? Yes () No (X)

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation and the disposition of such charges, if known:

c. Did the accomplice(s) testify at the defendant's trial?

Yes () No ()

7a. Do you agree with the verdict of the jury as to guilt?

Yes (X) No ()

b. If no, explain:

8. Did the defendant waive jury determination of punishment?

Yes () No (X)

9. a. What sentence was imposed? Death () Life Imprisonment (X)

b. If life imprisonment, was it imposed as a result of a hung jury?

Yes () No (X)

10. Aggravating Circumstances, T.C.A. §39-2-203(i):

a. Were statutory aggravating circumstances found? Yes () No (X)

b. Which of the following statutory aggravating circumstances were instructed and which were found?

	<u>Instructed</u>	<u>Found</u>
(1) The murder was committed against a person less than twelve years of age and the defendant was eighteen years of age, or older.	()	()
(2) The defendant was previously convicted of one or more felonies, other than the present charge, which involve the use or threat of violence to the person.	()	()
(3) The defendant knowingly created a great risk of death to two or more persons, other than the victim murdered, during his act of murder.	()	()
(4) The defendant committed the murder for remuneration or the promise of remuneration, or employed another to commit the murder for remuneration or the promise of remuneration.	()	()
(5) The murder was especially heinous, atrocious, or cruel in that it involved torture or depravity of mind.	()	()
(6) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another.	()	()
(7) The murder was committed while the defendant was engaged in committing, or was an accomplice in the commission of, or was attempting to commit, or was fleeing after committing or attempting to commit, any first degree murder, arson, rape, robbery, burglary, larceny, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb.	()	()
(8) The murder was committed by the defendant while he was in lawful custody or in a place of lawful confinement or during his escape from lawful custody or from a place of lawful confinement.	()	()
(9) The murder was committed against any peace officer, corrections official, corrections employee or fireman, who was engaged in the performance of his duties, and the defendant knew or reasonably should have known that such victim was a peace officer, corrections official, corrections employee or fireman, engaged in the performance of his duties.	()	()

(10) The murder was committed against any present or former judge, district attorney general or state attorney general, assistant district attorney general or assistant state attorney general due to or because of the exercise of his official duty or status and the defendant knew that the victim occupies or occupied said office. () ()

(11) The murder was committed against a national, state, or local popularly elected official, due to or because of the official's lawful duties or status, and the defendant knew that the victim was such an official. () ()

(12) The defendant committed "mass murder" which is defined as the murder of three or more persons within the State of Tennessee within a period of forty-eight (48) months, and perpetrated in a similar fashion in a common scheme or plan. () ()

Relate any significant aspects of the aggravating circumstances that influence the punishment.

c. Were the aggravating circumstances found supported by the evidence? Yes () No ()

11. Mitigating Circumstances, T.C.A. §39-2-203(j):

a. Were mitigating circumstances in evidence? Yes () No ()

b. If so, what mitigating circumstances were in evidence?

	<u>Yes</u>	<u>No</u>
(1) The defendant has no significant history of prior criminal activity;	()	()
(2) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;	()	()
(3) The victim was a participant in the defendant's conduct or consented to the act;	()	()
(4) The murder was committed under circumstances which the defendant reasonably believed to provide a moral justification for his conduct;	()	()
(5) The defendant was an accomplice in the murder committed by another person and the defendant's participation was relatively minor;	()	()

- (6) The defendant acted under extreme duress or under the substantial domination of another person; () ()
- (7) The youth or advanced age of the defendant at the time of the crime; () ()
- (8) The capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was substantially impaired as a result of mental disease or defect or intoxication which was insufficient to establish a defense to the crime but which substantially affected his judgment. () ()
- (9) Other (explain): _____ () ()
- _____
- _____
- _____

(c) Relate any significant facts about the mitigating circumstances that influence the punishment.

(d) If tried with a jury, was the jury instructed to consider the circumstances indicated in 11(b) as mitigating circumstances? Yes (X) No ()

12. If the sentence was death, does the evidence show that the defendant killed, attempted to kill, or intended that a killing take place or that lethal force be employed? Yes () No ()

13. Was there evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense? Yes (X) No ()

If yes, explain: Defendant Sutton testified he had been drinking, but his defense was not predicated upon intoxication

14. General comments of the trial judge concerning the appropriateness of the sentence imposed in this case (may include consideration of sentences imposed in any similar cases the judge has tried):

B. DATA CONCERNING DEFENDANT

1. Name Sutton Gary Wayne 2. Birth Date 2/24/65
last first middle mo./day/year

3. Sex M

4. Marital Status: Never Married

5. Race Cauc

Married ☒

6. Children: Number 1
Ages 2

Divorced ☐

Spouse Dec'd ☐

Other Dependents:

7. Parents: Father -- living? Yes ☒ No ☐

Mother -- living? Yes ☒ No ☐

8. Education: Highest Grade or Level Completed: 10

9. Intelligence Level Low (IQ below 70) ☐

Medium (IQ 70 to 100) ☐

High (IQ above 100) ☐

Not Known ☐

10 a. Was a psychiatric or psychological evaluation performed?

Yes ☐ No ☒

b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation.

11. Brief impression of trial judge as to conduct of defendant at trial and sentencing: _____

12. Prior Work Record of Defendant:

Type of Job	Pay	Dates Held	Reason for Termination
a. 1989-PRESENT: CARPENTER	\$6.00 HR	1989-1992	LAY OFF - SLOW WORK
b. MACHINE OPERATOR: LUMBER YARD	\$5.85 HR	1985-1989	COMPANY CLOSED
c. CARPENTER: HOUSE BUILDING	\$6-8 HR	1979-1985	TO HAVE LOCAL WORK OUT-OF-STATE
d. FARMWORK	\$1.00 HR	1974-1979	ONLY PART TIME AS A MINOR
e.			

13. Defendant's Military History:

NONE

14a. Does the defendant have a record of prior conviction?

Yes () No ()

b. If yes, list the offenses, the dates of the offenses and the sentences imposed:

Offense	Date	Sentence
1.		
2.		
3.		
4.		
5.		
6.		

15. Was the defendant a resident of the community where the homicide occurred? Yes (✓) No ()

16. Noteworthy physical or mental characteristics or disabilities of defendant:

alcohol dependence

17. Other significant data about the defendant:

C. DATA CONCERNING VICTIM

1. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.):

FRIEND

2. Was the victim a resident of the community where the homicide occurred? Yes (☒) No (☐)

3. What was the victim's age? 33

4a. What was the victim's race? CAUC.

b. Was the victim the same race as defendant? Yes (☒) No (☐)

5a. What was the victim's sex? F

b. Was the victim the same sex as defendant? Yes (☐) No (☒)

6. Was the victim held hostage during the crime?

☐ Yes -- Less than an hour

☐ Yes -- More than an hour

☐ No

If yes, give details: UNKNOWN - Victim was with the Defendants over a long period of time. Don't know when her presence became involuntary.

7a. Describe the physical harm and/or injuries inflicted on the victim:

Death : Burning of Body (The Victim
was believed to have been shot. The body
was then set on fire & burned in the victim's vehicle.

b. Was the victim tortured? Yes () No ()

c. If yes, state the nature of the torture: _____

8. What was the victim's reputation in the community where he or she lived? Good () Bad () Unknown (X)

D. REPRESENTATION OF DEFENDANT

1. How many attorneys represented defendant? Two (2)

[If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.]

2. Name of counsel: JANE DANIEL D.W. WEBB
SEVIERVILLE, TN

3. Date counsel secured: _____

4. How was counsel secured: A. Retained by defendant (X)
B. Appointed by court ()
C. Public defender ()

5. If counsel was appointed by court, was it because:

A. Defendant unable to afford counsel? ()
B. Defendant refused to secure counsel? ()
C. Other (explain) N/A

6. How many years has counsel practiced law? A. 0 to 4 ()
B. 5 to 10 ()
C. over 10 (X)

7. What is the nature of counsel's practice? A. Mostly civil
B. General
C. Mostly criminal

8. Did counsel serve throughout the trial? Yes (X) No ()

7a. Describe the physical harm and/or injuries inflicted on the victim

b. Was the victim tortured? Yes () No ()

c. If yes, state the nature of the torture:

8. What was the victim's reputation in the community where he or she lived? Good () Bad () Unknown ()

D. REPRESENTATION OF DEFENDANT

1. How many attorneys represented defendant? Two (2)

[If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.]

2. Name of counsel: ZANE DANIEL D.W. WEBB
KNOXVILLE, TN

3. Date counsel secured: _____

4. How was counsel secured: A. Retained by defendant ☒
B. Appointed by court ☐
C. Public defender ☐

5. If counsel was appointed by court, was it because:

A. Defendant unable to afford counsel? ()
B. Defendant refused to secure counsel? ()
C. Other (explain) _____

N/A

6. How many years has counsel practiced law? A. 0 to 4 ()
B. 5 to 10 ()
C. over 10 (X)

7. What is the nature of counsel's practice? A. Mostly civil
B. General
C. Mostly criminal

8. Did counsel serve throughout the trial? Yes (X) No ()

9. If not, explain in detail. _____

10. Other significant data about defense representation. _____

E. GENERAL CONSIDERATIONS

1. Was race raised by the defense as an issue in the trial?

Yes () No (X)

2. Did race otherwise appear as an issue in the trial?

Yes () No (X)

3. What percentage of the population of your county is the same race as the defendant?

- | | |
|--------------|-----|
| a. Under 10% | () |
| b. 10 to 25% | () |
| c. 25 to 50% | () |
| d. 50 to 75% | () |
| e. 75 to 90% | () |
| f. Over 90% | (X) |

4. Were members of defendant's race represented on the jury?

Yes (X) No ()

How many of defendant's race were jurors? 12

5a. If not, was there any evidence they were systematically excluded from the jury? Yes () No ()

b. If yes, what was that evidence? N/A

6. Was there extensive publicity in the community concerning this case? Yes (X) No ()

7. Was the jury instructed to disregard such publicity?

Yes--(X) No ()

8. Was the jury instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when imposing sentence?

Yes (X) No ()

9. Was there any evidence that the jury was influenced by passion, prejudice, or any other arbitrary factor when imposing sentence?

Yes () No (X)

10. If answer is yes, what was that evidence?

11a. Was a change of venue requested? Yes (X) No ()

b. If yes, was it granted? Yes () No (X)

Reasons for change if granted:

F. CHRONOLOGY OF CASE

	Elapsed Days
1. Date of offense <u>FEB. 22 1992</u>	
2. Date of arrest <u>MARCH 5 1992</u>	
3. Date trial began <u>FEB 16 1993 - FEB 24 1993</u>	<u>8</u> EXCLUDES SUNDAY
4. Date sentence imposed <u>FEB. 24, 1993</u>	
5. Date post-trial motions ruled on <u>JULY 23, 1993</u>	
6. Date trial judge's report completed <u>Aug. 25, 1993</u>	
*7. Date received by Supreme Court	
*8. Date sentence review completed	
*9. Total elapsed days	
10. Other	

*To be completed by Supreme Court.

This report was submitted to the defendant's counsel and to the attorney for the state for such comments as either desired to make concerning its factual accuracy.

1. His comments are attached
2. He stated he had no comments
3. He has not responded

D.A.

Defense Counsel

()
~~()~~
()

()
~~()~~
()

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

8/25/93
Date

[Signature]
Judge, Circuit
Court of Sevier
County

Courtesy of
Time of Death Podcast
by Beth Braden

IN THE CRIMINAL COURT FOR SEVIER COUNTY, TENNESSEE
AT SEVIERVILLE

STATE OF TENNESSEE

v.

JAMES ANDERSON DELLINGER

CIRCUIT COURT FILED	
HOUR <u>11:30</u>	M <u>5035</u>
DATE: <u>AUG 26 1993</u>	NO <u>5036</u>
<i>James A. Dellinger</i>	
CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

MOTION FOR NEW TRIAL ON THE BASIS OF NEWLY DISCOVERED EVIDENCE

Comes the defendant, James Anderson Dellinger, by and through counsel and hereby moves this Honorable Court to grant the defendant a new trial based on newly discovered evidence and would show the Court as follows:

1. That on August 23, 1993, counsel for the defendant received a letter from Asst. District Attorney General Scott Green, a copy of which is attached to this motion, indicating a substance of some newly discovered evidence.

2. That evidence was discovered by Asst. District Attorney General Scott Green on July 30, 1993, during the probation revocation hearing of Bill Cogdill. At that hearing Joyce Tipton testified that Bill Cogdill told her, "If you show up for court, I'll burn you up in your car just like I did Connie."

Respectfully submitted,

Edward C. Miller

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

CERTIFICATE OF SERVICE

I certify that I have sent a copy of the foregoing to the Mr. G. Scott Green, Asst. District Attorney for Sevier County, Tennessee, and to Mr. David Webb, attorney-at-law, this the 24 day of August, 1993.

Edward C. Miller

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

Attorney, which had been previously ordered by the Court. It was announced that the Public Defender's Office had a conflict in this case and the Court appointed Attorney Charles I. Poole to represent the defendant.

STATE

VS.

LESTER BENNETT, SR.

No: 5227

It was announced to the Court that the Motion for New Trial/Reduction of Sentence is continued at the request of Attorney Ron Webster.

STATE

VS.

GARY WAYNE SUTTON

No: 5033,5034

This cause was heard on a Motion for New Trial Based on New Evidence which was considered by the Court and denied.

STATE

VS.

JAMES A. DELLINGER

No: 5035,5036

This cause was heard on a Motion for New Trial Based on New Evidence which was considered by the Court and denied.

STATE

VS.

BRENDA MCMAHAN

No: 5407

Came the Assistant District Attorney, Steve Hawkins, and the defendant with her Attorney, Charles Poole, for sentencing in this case. After consideration by the Court of all appropriate sentencing factors, the defendant is sentenced as reflected on the Judgment. It is hereby ordered by the Court that said Judgment is hereby approved and shall be made a part of the minutes of this date.

STATE

VS.

DIANA RUSSELL

No: 4700

This cause was heard on a Motion for Work Release which was considered by the Court. After due consideration, the Court ordered the defendant placed on Community Corrections under the supervision of Patty Williams.

STATE

VS.

JOHN LOVEDAY

No: 4923

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

AT SEVIERVILLE

MONDAY, AUGUST 9, 1993

*Filed Sept. 20, 1993
Helen K. Loneyday, Clerk*

Court met pursuant to adjournment, present and presiding The Honorable Rex Henry Ogle, Judge of Division III of said Court, when the following proceedings were had and entered of record, to-wit:

STATE

VS.

EUGENE MELVIN MOSS

No: 5228, 5452

Came the Assistant District Attorney General and the Defendant in person with his Attorney, Ed Miller, and announced to the Court that a plea agreement had been reached between all parties. It is hereby ordered by the Court that said plea agreement and judgment are hereby approved and shall be made a part of the minutes of this date.

STATE

VS.

FRANK P. BUERO, JR.

No: 5380

Came the Assistant District Attorney General and the Defendant in person with his Attorney, Dennis Campbell, and announced to the Court that a plea agreement had been reached between all parties. It is hereby ordered by the Court that said plea agreement and judgment are hereby approved and shall be made a part of the minutes of this date.

STATE

VS.

GARY WAYNE SUTTON

No: 5033, 5034

JAMES A. DELLINGER

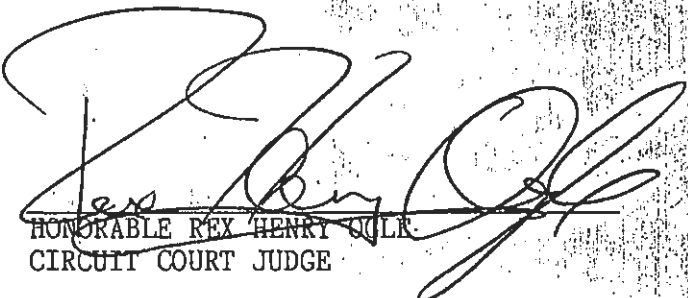
No: 5035, 5036

District Attorney Al Schmutzer, Jr. appeared on behalf of the State of Tennessee and made a Motion requesting that the exhibits in the above-styled cases be photographed and substituted for these exhibits so they can be turned over to Blount County for their upcoming trial against the above-named defendants. After hearing proof and giving consideration thereto the Court granted the Motion over the objection of defense counsel, Ed Miller and David Webb.

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

These were all of the proceedings had this 9th day of August, 1993. Court thereupon adjourned. These minutes were read and approved for entry the

16 day of September, 1993.


HONORABLE REX HENRY OGLE
CIRCUIT COURT JUDGE

Courtesy of
Time of Death Podcast
by Beth Braden

IN THE CIRCUIT COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

VS.

GARY WAYNE SUTTON, ALIAS
JAMES ANDERSON DELLINGER, ALIAS

:

:

: NO. 5033, 5034

:

:

:

ORDER

CIRCUIT COURT FILED	
HOUR	M
DATE: SEP 24 1993	
<i>Glenn R. Goudney</i> CIRCUIT COURT CLERK SEVIER COUNTY, TENN.	

Upon motion of the State, and for good cause shown, it is hereby,

ORDERED, ADJUDGED, AND DECREED, that the originals of all exhibits filed in this cause shall be removed by Sheriff Don Ogle, or his duly authorized representative, and contemporaneous with said removal photographs or photocopies of each exhibit shall be substituted and made a part of this record.

It is, further, ORDERED that the Sevier County Sheriff's Department, Blount County Sheriff's Department, and the District Attorney General's Office for the Fifth Judicial District (Blount County) shall release, as soon as possible, those items currently in their possession which shall not be used as evidence in the pending murder prosecution against these defendants in Blount County.

ENTER this 24 day of Sept, 1993.

Rex Henry Ogle
HONORABLE REX HENRY OGLE
CIRCUIT COURT JUDGE

APPROVAL:

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

David Webb
DAVID WEBB
ATTORNEY FOR DEFENDANT

Ed Miller
ED MILLER
PUBLIC DEFENDER

Entered Minute Book A-10 Page 143

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FELONY CONVICTION
STATE OF TENNESSEE, COUNTY OF SEVIER

STATE OF TENNESSEE

No. 5033-5036 Charge

vs

GARY W. SUTTON & JAMES A. DELLINGER Convicted of

Sentence

Date of Indictment Date of Judgement

Sentence to Run Concurrently/Consecutively to Sentence in No.

BILL OF COSTS

COURT CLERK FEES	Filing Lower Court Record @2.00	Taking Bond @2.00	
	Filing Indictment..... 2.00	Qualify Each Surety @2.00	
	_____ Dockets..... @2.00	Filing Bond @2.00	
	Copy of Indictment:	Notify Defense Attorney @2.00	
	On Minutes 2.00	Empaneling Jury @2.00	
	To Defendant..... 2.00	_____ G. J. Subpoenas @2.00	
	Arraignment & Plea:	_____ State Subpoenas @2.00	
	Minute Entry 2.00	_____ Continuances @1.50	
	Order Fixing Bail..... 2.00	_____ Respitals @1.50	
	Enter Judgement on Minutes 3.00	_____ Orders on Minutes @2.00	
	Bill of Costs on Execution Docket 3.00	_____ Motions on Minutes @2.00	
	Fi Fa & Costs Thereon @5.00	_____ Petitions on Minutes @2.00	
	Enter Judgement vs. State 3.00	_____ Affidavits—Filed @2.00	
	Bill of Costs to Comptroller 2.50	_____ Exhibits—Filed @2.00	
	Copy—Final Order to Comptroller..... 2.50	_____ Rule Docket Entries @2.00	
	Certificate & Seal 4.00	_____ Probate State Witness @1.50	
	Commitment to State Pen, County	_____ Capias Issued @5.00	
	Jail or Workhouse @3.50	_____ Si Fa Issued @5.00	
	Copy Indictment—State Pen @2.00	_____ Copies Process Issued @1.50	
	Three Copies to Central Records	_____ Copies—Other @2.00	
	for Sentence of One Year or	_____ Filing—Other @2.00	
	More in County Jail or		
	Workhouse @6.00	Appeal:	
	Notice to State Election	File Bill of Exceptions @2.00	
	Coordinator upon Conviction	Enter Order of Appeal @3.00	
	of Infamous Crime.....	File Procendendo @2.00	
			\$
SHERIFF	Arrest Fee @10.00	_____ G. J. Subpoenas @2.50	
	Ex Capias @10.00	_____ State Subpoenas @2.50	
	Ex Attachment or Si Fa @ 6.00	Nulla Bona Return Fi Fa @2.50	
	Taking Bond @ .50		
			\$
OFFICER TRAVEL	Inside State	(Statement Attached)	
	Outside State	(Statement Attached)	
			\$
GENERAL SESSIONS COURT CLERK	Affidavit & Warrant 4.00	_____ State Subpoenas @2.00	
	Docketing 2.00	_____ Mittimus @2.00	
	Judgement 3.00	_____ Bond @2.00	
	Bill of Cost 3.00		
			\$
STATE WITNESS	Name & Address	Per Diem & Mileage	Total
	Name _____	Per Diem _____ Days @ _____ = _____	
	Address _____	Mileage _____ Miles @ _____ = _____	
	Name _____	Per Diem _____ Days @ _____ = _____	
	Address _____	Mileage _____ Miles @ _____ = _____	
	Name _____	Per Diem _____ Days @ _____ = _____	
	Address _____	Mileage _____ Miles @ _____ = _____	
	Additional Witnesses (list on back of this Bill of Costs)		
	Note: Copy of petition and court order must be attached authorizing travel and per diem of witnesses from out of state.		
			\$
OTHER	Jury—Meals & Rooms (Jury Bills & Receipts Attached)		
	Diagnostic Fee (Order and Statement of Fee Attached)		
	Emergency Hospitalization (Claim Attached)		
	Appeal Cost Transcript [T.C.A. § 8-21-501]		
		561.45	\$
546	TOTAL		\$561.45

CERTIFICATE AND SEAL OF CIRCUIT COURT CLERK

STATE OF TENNESSEE)
)
COUNTY OF SEVIER) ss

I, Helen K. Loveday, Clerk of the Circuit Court
for the County of Sevier, in the State aforesaid, do certify
that the foregoing is a correct transcript of the

RECORD ON APPEAL

and proceedings had in said Court in the case heretofore prosecuted and determined thereon, between

STATE OF TENNESSEE
GARY WAYNE SUTTON AND JAMES ANDERSON DELLINGER

as the same remains of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and
affix the seal of said Court at office, in Sevierville, Tennessee,
on the 3RD OF MARCH in the Year One Thousand
Nine Hundred and ninety-four and in the 217th year of
American Independence.

Helen K. Loveday - m.d.
HELEN K. LOVEDAY,
CIRCUIT COURT CLERK FOR
SEVIER COUNTY, TENNESSEE