

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

In re:	)	
	)	No. _____
Petition to Modify	)	
Tennessee Supreme Court Rule 13,	)	
Section 5(a)(1) and (5)(d)(1)	)	
	)	

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PETITION TO MODIFY TENNESSEE SUPREME COURT  
RULE 13, SECTION 5 (a)(1) and 5(d)(1)

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This Court “welcomes the continuing criticisms of its Rules,” which “never become final, and are always subject to change.” *Barger v. Brock*, 535 S.W.2d 337, 342 (Tenn. 1976). “When any individual deems any Rule of Court to be objectionable from any standpoint, it is his privilege to petition the Court for its elimination or modification.” *Id.* Petitioners are members of the Tennessee bar who seek to ensure that people accused of crimes in Tennessee’s courts can access the resources necessary to prepare and present their defense and protect their constitutional rights.

Tennessee Supreme Court Rule 13, § 5(a)(1) provides indigent criminal defendants with expert, investigative, and other support services at State expense when the court presiding over the case finds such services are necessary to ensure the protection of their constitutional rights. Nevertheless, the Administrative Office of the Courts (“AOC”) Director and the Chief Justice of the Tennessee Supreme Court routinely vacate orders issued by General Sessions judges authorizing services under Rule 13, § 5(a)(1). They do so based on their interpretation that the Rule does not

apply in General Sessions courts, but only to cases in the “trial court.” For the same reason, they routinely deny expert and investigative services approved by Criminal Courts for defendants whose cases are bound over, but not yet indicted. While the AOC Director and Chief Justice have approved Rule 13 funding orders in juvenile court transfer proceedings, their interpretation limiting Rule 13 to persons in “trial courts” threatens this continued practice.

The AOC Director and the Chief Justice also vacate orders approving necessary expert services paid at fees that exceed the maximum hourly rates established by Tennessee Supreme Court Rule 13, § 5(d)(1), even when the trial court finds the higher rates are reasonable and the services are otherwise unavailable. Rule 13, § 5(b)(2), does not authorize a trial court to approve an hourly fee that exceeds the rate caps – and this Court has not increased the maximum hourly rates in more than twenty years, making it difficult or impossible for indigent defendants to find available and qualified experts.

These practices deny or significantly prejudice the ability of indigent defendants to investigate and prepare their defense, in violation of their constitutional rights. They also establish unfair barriers that defendants with wealth do not experience, and in some circumstances arbitrarily subject similarly-situated indigent defendants to disparate treatment based solely upon the type of appointed counsel representing them.

For these reasons, Petitioners move this Court to amend Tennessee Supreme Court Rule 13, § 5(a)(1) and (5)(d)(1), to ensure that everyone accused of a crime who

is indigent has timely access to the expert, investigative, and other support services necessary to prepare their defense for trial and to protect their constitutional rights.

## BACKGROUND

This Court has recognized the need for funding for investigative, expert, or other support services for indigent criminal defendants as a constitutionally protected due process right. *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000). In 1997, this Court amended Tennessee Supreme Court Rule 13 with the intention of ensuring that no defendant is denied the protection of his or her constitutional rights solely because of indigency. *Id.*

Tennessee Supreme Court Rule 13, § 5(a)(1) provides as follows:

***In the trial and direct appeal of all criminal cases in which the defendant is entitled to appointed counsel*** and in the trial and appeals of post-conviction proceedings in capital cases involving indigent petitioners, the court, in an *ex parte* hearing, may in its discretion determine that investigative or expert services or other similar services are necessary to ensure that the constitutional rights of the defendant are properly protected. If such determination is made, the court may grant proper authorization for these necessary services ***in a reasonable amount to be determined by the court.*** The authorization shall be evidenced by a signed order of the court.

(Emphasis added). Rule 13 also requires the AOC Director and the Chief Justice to maintain “uniformity as to the rates paid” for services to indigent parties, and establishes certain maximum hourly fee caps for individuals and entities providing those services. *Id.* § 5(d)(1). Unlike § 5(d)(4) & (5), which authorizes trial courts to exceed total spending caps on investigative and expert services in capital post-conviction proceedings upon a showing of exceptional circumstances, the Rule does not authorize judges to exceed the maximum hourly rate caps.

Once a court authorizes services under Rule 13 for an indigent person, §5(e)(4) requires that person to obtain “approval” from the AOC Director in order to access the funds authorized by a court order. *Id.* at § 5(e)(4). If the Director does not approve the order, the Chief Justice reviews it. *Id.* at § 5(e)(5). If the Chief Justice does not approve it, Rule 13 § 5(e)(4)-(5) forecloses an indigent defendant from accessing the funds the court authorized and determined were necessary to protect the indigent person’s constitutional rights. *Id.* The AOC Director and the Chief Justice have construed these provisions to give them authority to vacate court orders for substantive reasons, although they lack constitutional authority to do so, as set forth in an accompanying petition to modify Rule 13.<sup>1</sup>

Despite the expressed intent of Rule 13, the AOC Director and the Chief Justice routinely deny indigent defendants of expert and investigative services deemed necessary by the courts presiding over their cases, and do so precisely when those services are most critical to their defense – in the days and months immediately after their arrest. These denials are based on their interpretation that Rule 13, § 5(a)(1) authorizes expert and investigative funds only for defendants whose cases are in the “trial courts.”<sup>2</sup> According to the AOC Director and the Chief Justice, that does

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<sup>1</sup> Petitioners incorporate that petition herein by reference.

<sup>2</sup> See e.g., Collective Exhibit 1 to this Petition (documents from *State v. Vondre Allen*, Case No. @1365959, Knox County General Sessions Court, Felony Division (Sept. 2020) (denying investigative services approved by General Sessions Court), *State v. Danny Frazier*, Case No. @1372993 and @1373983, Knox County General Sessions Court, Felony Division (Oct. 2020) (denying expert services approved by General Sessions Court), and *State v. Zachari Moore*, Case Nos. @1279181-82, @1279185-87, Knox County Criminal Court (Nov. 2018) (denying expert services approved by Criminal Court in bound over case).

not include cases in General Sessions Courts, nor does it include cases that are bound over but not yet indicted. This interpretation violates indigent defendants' constitutional due process protections. Further, when it deprives an indigent accused who is represented by private appointed counsel from accessing the same pretrial investigative services the State routinely provides to persons who are represented by public defenders, they violate equal protection.

Although Rule 13 does not specifically address constitutionally required services for children facing transfer for trial as adults, the AOC has historically approved and paid for these services, without which the statutory factors for transfer cannot be addressed.<sup>3</sup> More recently, however, the AOC has indicated its interpretation of Rule 13, §5(a) may also apply to proceedings in juvenile court, making approval of future funding requests uncertain.

Finally, the AOC Director and the Chief Justice vacate orders approving necessary expert services at fees in excess of the maximum hourly rates set out in Tennessee Supreme Court Rule 13, § 5(d)(1), even when the trial court finds that the higher rates are reasonable, and that the services are unavailable at or below the approved rate. *See, e.g., In re Petition to Amend Tennessee Supreme Court Rule 13, Section 5(d)(1)*, No. ADM2018-01860, at pp. 4-5 (filed October 8, 2018) (detailing the denial by the AOC Director and Chief Justice of necessary expert services of a pediatric gastroenterologist to an indigent defendant, because “Rule 13 does not authorize the \$400.00 per hour rate for service sought...”). When that happens, an

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<sup>3</sup> *See* Exhibit 2 to this Petition (Affidavit of Dr. Kathryn Smith).

indigent defendant finds herself in a conundrum – she has established her constitutional right to the expert services, but she has no means to access them. The unacceptable result is the denial of her constitutional rights to due process, a fair trial, and the effective assistance of counsel.

## ARGUMENT

“[W]hen a State brings its judicial power to bear against an indigent defendant in a criminal proceeding, it must take steps to insure that the accused has a fair opportunity to present his defense.” *State v. Barnett*, 909 S.W.2d 423, 426 (Tenn. 1995) (citing *Ake v. Oklahoma*, 470 U.S. 68, 76, 105 S. Ct. 1087, 84 L.Ed.2d 53 (1985)). This principle of law is grounded in the Fourteenth Amendment’s due process guarantee of fundamental fairness, and “derives from the belief that justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake.” *Id.* Fundamental fairness requires a State to provide an indigent defendant with the “basic tools of an adequate defense or appeal.” *Id.* (quoting *Britt v. North Carolina*, 404 U.S. 226, 227, 92 S. Ct. 431, 30 L.Ed.2 40 (1971)).

In capital cases, the Tennessee legislature has authorized courts to provide indigent defendants with “investigative or expert services or other similar services” in a “reasonable amount” to ensure that their constitutional rights are protected. Tenn. Code Ann. § 40-14-207(b). In non-capital cases, this Court has held that “due process of law principles required the appointment of expert assistance . . . when the defendant is able to show that such assistance is necessary to conduct a

constitutionally adequate defense.” *See State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000) (citing *State v. Barnett*, 909 S.W.2d 423, 426 (Tenn. 1995)). Accordingly, this Court amended Rule 13 in 1997 to ensure that right “in the trial and direct appeals of *all* criminal cases in which the defendant is entitled to appointed counsel . . .” *Id.* (emphasis in original). Today, by routinely (and summarily) vacating expert and investigative funding orders that lower courts decided were necessary to protect a criminal defendant’s constitutional rights, the AOC Director and the Chief Justice undermine the stated purpose of Rule 13, and violate the constitutional rights it was written to protect.

- A. Rule 13, § 5(a)(1), should be amended to clarify that indigent defendants have a right to necessary investigative, expert and other support services at all critical stages of a criminal prosecution.

Rule 13, § 5(a)(1) states that expert, investigative, and other support services are available “*in the trial* and direct appeal of all criminal cases in which the defendant is entitled to appointed counsel . . .”. (Emphasis added). The AOC Director and the Chief Justice interpret this language to limit expert and investigative assistance to proceedings in a “trial court,” but that interpretation is flawed for multiple reasons. First, it is inconsistent with the traditional rules of statutory construction, which apply when interpreting Rules of the Tennessee Supreme Court. *State v. Orrick*, 592 S.W.3d 877, 886 (Tenn. Crim. App. 2018) (quoting *Lockett v. Bd. of Prof'l Responsibility*, 380 S.W.3d 19, 25 (Tenn. 2012)). “The most basic principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond

its intended scope." *Moreno v. City of Clarksville*, 479 S.W.3d 795, 804 (Tenn. 2015) (quoting *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995)). The Rule's text is of primary importance, and should be read "naturally and reasonably, with the presumption that the Court "says what it means and means what it says." *Id.* (quoting *In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015)).

This Court clearly articulated the intent of Rule 13 in *Scott*, 33 S.W.3d at 752, when it wrote: "[a]s the language of Rule 13 indicates, the intention of this Court is to ensure that no defendant is denied the protection of his or her constitutional rights solely because of indigency." The Court did not say its intent was to ensure the protection of these rights only to defendants whose cases are pending in a trial court. Further, it did not draft Rule 13, § 5(a)(1) to say "[i]n the trial [court] and direct appeal . . . ." Instead, the Court wrote § 5(a)(1) broadly to apply "in the trial and direct appeals of all criminal cases in which the defendant is entitled to appointed counsel . . . ."

So, what is the meaning of the phrase "in the trial," as used in Rule 13, § 5(a)(1)? Interpreting it to mean only in the trial itself is inappropriate, because that would produce an absurd result where expert and investigative services became available only after a trial commenced, which is too late. *Tennessean v. Metro. Gov't of Nashville*, 485 S.W.3d 857, 872 (Tenn. 2016) (courts are to avoid statutory construction that leads to absurd results). A more reasonable interpretation is that it includes all critical stages of a criminal prosecution that occur after initiation of adversarial proceedings and prior to a final judgment of conviction. This interpretation is consistent with the Court's stated intent in adopting Rule 13, and it

corresponds to when the related constitutional right to counsel attaches. *State v. Blye*, 130 S.W.3d 776, 780 (Tenn. 2004) (citations omitted) (constitutional right to assistance of counsel attaches when adversarial judicial proceedings are initiated against defendant). It also ensures that indigent defendants can access expert and investigative services immediately after arrest and prior to the preliminary hearing in General Sessions courts, when doing so is necessary to protect their constitutional rights.

The preliminary hearing is a critical stage of the criminal trial process, “at which certain rights may be sacrificed or lost.” *McKeldin v. State*, 516 S.W.2d 82, 85 (Tenn. 1974) (superseded by statute on other grounds). As such, defendants are entitled to assistance of counsel at that hearing. *Id.* at 85-86; *see also Coleman v. Alabama*, 399 U.S. 1, 7 (1970). This includes the right to effective assistance of counsel, which requires access to necessary experts and investigators. *See generally Kendrick v. State*, 454 S.W.3d 450, 477 (Tenn. 2015) (“there are cases in which defense counsel must summon expert testimony. . .”); *see also Williams v. Martin*, 618 F.2d 1021, 1025, 1027 (4th Cir. 1980); *Mason v. Arizona*, 504 F.2d 1345, 1351 (9th Cir. 1974). Without the ability to obtain those services in General Sessions court, critical evidence can be lost, and the defendant’s ability to prepare his defense irrevocably impaired.<sup>4</sup> To deny an indigent defendant the ability to gather and

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<sup>4</sup> In Tennessee, several months can pass between a person’s arrest and indictment. During that time, witnesses can move away or their memories fade. Evidence, such as security videos, can be lost because the owner did not preserve it, and law enforcement failed to obtain it. Without access to investigative services early in the trial process, a defendant may lose the ability to prepare his defense during this critical pretrial period. *See State v. Ferguson*, 2 S.W.3d 912 (Tenn. 1999) (law enforcement has limited duty to obtain evidence); *State v. Marshall*, 845 S.W.2d 228, 233 (Tenn. Crim. App. 1992) (defendant bears responsibility for failing to discover evidence available to both prosecutor and defendant).

preserve evidence, especially exculpatory evidence, is to deny the defendant a fundamentally fair trial process.

The interpretation of Rule 13 advanced by the AOC Director and the Chief Justice also violates the equal protection rights of indigent defendants represented by private appointed lawyers. The State of Tennessee funds investigators (as well as administrative support personnel) for several of its public defender offices. Indigent defendants represented by those offices can access investigators at any time after arrest. Meanwhile, the AOC Director's and Chief Justice's interpretation of Rule 13 denies indigent defendants represented by private appointed counsel the same resources until their case is indicted, which may be months after their arrest.

There is no rational basis to deny expert and investigative services to indigent defendants represented by appointed counsel that are routinely provided to similarly-situated persons represented by public defenders. In fact, the government has an interest in providing all indigent defendants with access to necessary investigative and expert services as soon as possible after arrest. Beyond ensuring that no person is denied the protection of their constitutional rights due to indigency, early expenditures on investigative and expert services are likely to reduce long-term costs associated with extended pretrial proceedings. Timely access to an investigator or necessary expert allows defense counsel to identify exculpatory and inculpatory evidence more quickly, and in turn to seek dismissal of the charges or a plea bargain sooner rather than later. In contrast, delaying access to these services drives up expenses associated with the defendant's pretrial incarceration and court-appointed

attorney fees. It also contributes to unnecessary case delays and crowding of court dockets.

General Sessions courts in Tennessee have interpreted Rule 13 to authorize orders for investigative and expert services funding when the criminal trial proceedings are still within their jurisdiction, and they have done so upon a finding that the Due Process and Equal Protection Clauses require it. Similarly, Criminal Courts have interpreted Rule 13 to authorize such funding when a case is bound over, and not yet indicted. In doing so, these courts realize that time is of the essence, and that the services requested are needed to pursue and evaluate evidence relevant to material issues likely to be in dispute at trial. They are also properly exercising the judicial power vested in them by the Tennessee Constitution and our legislature. *See* Tenn. Code Ann. § 16-15-501(a); *McCulley v. State*, 53 S.W. 134, 180 (Tenn. 1899). Accordingly, this Court should amend Rule 13, § 5(a)(1), to clarify that such investigative and expert funding orders are included within the realm of the constitutionally necessary services under Rule 13.

B. Rule 13, § 5(a)(1) should be amended to clarify that indigent juveniles, charged with offenses that qualify them for transfer to adult court, have a right to necessary investigative, expert, and other support services at all critical stages of the criminal prosecution, including in juvenile court.

Rule 13 requires amendment to cover the appointment of expert services for children who are facing a petition to transfer them for trial as an adult pursuant to Tenn. Code Ann. § 37-1-134. The current version of Rule 13 makes no mention of these cases, and yet the Juvenile Courts across the state, as well as the

Administrative Office of the Courts, have historically approved expert funding for these cases. *See* Exhibit 2, *supra* note 3.

Expert funding for children facing a transfer petition is particularly important given the elements of transfer set forth in the statute. In making a determination as to whether a child should be transferred for trial as an adult, the juvenile court must first find, *inter alia*, that “[t]he child is not committable to an institution for the developmentally disabled or mentally ill.” Tenn. Code Ann. § 37-1-134(a)(4)(B). If the child is not committable, the juvenile court is required to consider a list of factors in deciding if transfer is appropriate. This list includes a consideration of “the nature of past treatment efforts and the child’s response thereto” and “[t]he possible rehabilitation of the child by use of procedures, services and facilities currently available to the court in this state.” Tenn. Code Ann. §§ 37-1-134(b)(2) and (b)(5).

These three factors cannot be adequately presented to the juvenile court without the use of expert services. Whether a child suffers from a mental illness or developmental disability is a question that cannot be answered by a lay witness, but unquestionably requires the analysis, examination, and evaluation of the child by an expert witness who can then, if appropriate, relate her findings to the court. The same is true for the possibility of rehabilitation. This factor requires the input of an expert versed in child psychology and development, who is familiar and has worked with the child.

Without funding for the necessary experts, children facing transfer petitions in juvenile court are deprived of due process as they are left unable to investigate,

obtain, or present evidence relating to the factors the court is required to consider. They are, essentially, left unable to answer the ultimate question the litigation poses. This leaves them without “a fair opportunity to present [their] defense”, contrary to *Barnett*, 909 S.W.2d at 426 (citing *Ake v. Oklahoma*, 470 U.S. 68, 76, 105 S. Ct. 1087, 84 L.Ed.2d 53 (1985)). Such a result violates fundamental fairness by depriving them of the basic tools to present an adequate defense, as answers to the trial court’s ultimate questions will be outside their reach. In turn, juvenile courts themselves, when not presented with expert opinion evidence, are left with an inadequate record upon which to base their rulings on transfer petitions.

The need for defense funding is particularly great in the context of the potential for rehabilitation. This factor is one that cannot be explored without the expert engaging the child in exploration of the motivations and factors which led to the commission of the offense in the beginning. As a result, this is a particularly delicate matter, which should be explored within the confines and security of the defense team. There is a wide gulf between a defendant discussing the circumstances of the offense with a defense expert and discussing those same circumstances with an evaluator provided by the State, whose report will be forwarded automatically to the Court and to the Government.

Not providing this funding deprives the Juvenile court a reliable and scientific basis on which to make the required findings of fact in a transfer case. The Juvenile judges would be placed at a disadvantage in the absence of this funding, as they would be called upon to make factual findings relating to the psychological profile and

mental health of a child without any expert trained in those fields to guide the judge's decision-making.

Presumably, it is for these reasons, that the historical practice has been to authorize this funding, both at the juvenile court level and at the AOC. The current version of Rule 13, however, does not match what is actually occurring and should therefore be modified to ensure that this constitutionally required right to funding is maintained.

C. Rule 13, § 5(d)(1), should be amended to allow a trial court to approve expert compensation at an hourly fee that exceeds the maximum rate upon a finding by clear and convincing evidence that extraordinary circumstances exist.

Rule 13, § 5(a)(1), authorizes courts, upon making the proper findings, to approve funding for necessary expert, investigative, and other support services “in a *reasonable amount* to be determined *by the court*.” (emphasis added). Rule 13, § 5(d)(1), directs the AOC Director and the Chief Justice to “maintain uniformity as to the rates paid individuals or entities for services provided to indigent parties.” To that end, it also contains a non-exclusive list of maximum hourly rates for certain types of experts. This Court has not updated these rates since 2004. *See In re Amendments to Sup. Ct. Rule 13*, No. M2003-02181-SC-RL-2-RL (Tenn. filed June 1, 2004). No exception currently exists in the Rule authorizing courts to exceed these maximum hourly rates, even when a court finds a higher rate is, in fact, reasonable and necessary to protect an indigent defendant's constitutional rights.

Because Rule 13, §5(d)(1), does not authorize a court to approve an hourly rate that exceeds the maximum fee set out therein, indigent defendants have found

themselves unable to access expert services they have proven are necessary to the protection of their constitutional rights. *See, e.g., In re Petition to Amend Tennessee Supreme Court Rule 13, Section 5(d)(1)*, No. ADM2018-01860, at pp. 4-5 (filed October 8, 2018) (detailing the denial by the AOC Director and Chief Justice of necessary expert services of a pediatric gastroenterologist to an indigent defendant, because “Rule 13 does not authorize the \$400.00 per hour rate for service sought...”). People with specialized knowledge, skill, and training are not obligated to work at rates far below their market value, which is where Rule 13’s rates have been for years. Consequently, the pool of experts available to indigent defendants for routine expert services is small and ever-shrinking. *See* Indigent Representation Task Force, *Liberty & Justice for All: Providing Right to Counsel Services in Tennessee* (2017), at pp. 52-53. Additionally, in certain specialized and highly-skilled fields, no qualified experts are willing to work for the rates approved by this Court. As a result, Rule 13’s purpose is defeated, and criminal defendants are denied the protection of their constitutional rights simply due to their indigency.

The remedy for this constitutional violation, which is also consistent with the discretion and duties delegated to courts conducting criminal proceedings under Rule 13, § 5(a)(1), is to amend § 5(d)(1) to incorporate an exception to the maximum hourly fee caps similar to that found in § 5(d)(4) & (5). Those subsections, which apply to capital post-conviction cases and set total compensation caps for investigative and expert services, authorize courts to exceed the maximum compensation totals if they find by clear and convincing evidence that extraordinary circumstances exist.

Amending Rule 13 to provide a similar “extraordinary circumstances” exception to the hourly fee caps would allow the AOC Director and Chief Justice to continue monitoring and maintaining uniformity of expert payments while providing the flexibility necessary to ensure the protection of all indigent defendants’ constitutional rights. Petitioners also urge this Court, as its own Indigent Representation Task Force did more than three years ago, to update the maximum hourly fees for all experts to reflect amounts commensurate with current market rates. *Id.* at p. 53.

### CONCLUSION

The General Assembly and this Court have authorized judges in Tennessee to approve funds necessary to ensure that an indigent person receives the protections of the state and federal constitutions. As a matter of constitutional law and fundamental fairness, those rights exist at all critical stages of adversarial criminal proceedings, including in General Sessions court and juvenile transfer proceedings. The deprivation of constitutionally required expert, investigative, or other support services violates due process, the right to a fair trial, and the right to effective assistance of counsel. Tennessee Supreme Court Rule 13, § 5(a)(1) and 5(d)(1), as interpreted and applied by the AOC Director and the Chief Justice, cause such a deprivation. In order to protect the constitutional rights of indigent defendants during pre-indictment proceedings and of juveniles in transfer proceedings, this Court should amend these sections of the Rule.

Dated: March 1, 2021.

Respectfully submitted,

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# **Collective Exhibit 1**

IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

VONDRE ALLEN,

Defendant.

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Warrant No. @1365959  
First Degree Murder

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ORDER APPROVING FUNDS TO HIRE AN INVESTIGATOR

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It appearing to the Court that Vondre Allen is in need of an investigator and that counsel for Mr. Allen has secured a commitment for the services of Gary Lamb, a licensed private investigator in Knoxville, and whose present business address is 6900 Hospitality Circle, Knoxville, TN 37909. Counsel has demonstrated by his investigation as detailed in his AFFIDAVIT IN SUPPORT OF EX PARTE SEALED MOTION FOR FUNDS FOR AN INVESTIGATOR that the services of Mr. Lamb are necessary and required by both the State and Federal Constitutions.

This Court is of the opinion that the services requested by undersigned counsel are necessary in order for counsel to provide the effective assistance required by the United States Constitution, as well as the Tennessee Constitution and that the approval of the services comports with the purpose of *Tenn. Code Ann.* § 40-14-207(b) as well as the purpose of Rule 13 of the *Rules of the Tennessee Supreme Court*. These funds are the minimum required in order to provide the constitutionally required level of services to the defendant in this cause.

Specifically, this court finds as follows:

1. There are a number of civilian witnesses who need to be located and interviewed to ensure that their statements are identified and preserved. Counsel cannot conduct these interviews alone without making themselves necessary witnesses

and therefore creating the very real possibility of a conflict of interest developing later in the case.

2. The American Bar Association's Standards for Criminal Justice assert that counsel must follow prevailing professional norms in making the decision about how an investigation be conducted and must "avoid the prospect of having to testify personally about the content of a witness interview" or other discovery during investigation. *See* ABA Standards for Criminal Justice 4-4.3(f) (4th ed. 2017).
3. The proposed investigator, Mr. Gary Lamb is well-known to the Court, has a long career of investigative work, and has been approved as an investigator through the courts and the Administrative Office of the Courts in hundreds of cases over many years. Mr. Lamb performs his services at a rate of \$50.00 per hour, and believes that this stage of the case will require a budget of \$2,000 to perform all of the necessary witness interviews and other related investigative tasks (such as locating the witnesses and reporting on the interview results).
4. Without this service, counsel for Mr. Allen cannot provide the effective assistance of counsel to him. Without this service, Mr. Allen will be deprived of due process of law at a critical stage in the proceedings.
5. It is a well-established rule that "when the State brings its judicial power to bear against an indigent defendant in a criminal proceeding, it must take steps to ensure that the accused has a fair opportunity to present his defense." *Ake v. Oklahoma*, 470 U.S. 68, 76, 105 S.Ct. 1087, 1092, 84 L.Ed.2d 53, 61 (1984). The United States Supreme Court, in *Ake*, held that this principle of law is grounded in the Fourteenth Amendment's due process guarantee of fundamental fairness

and “derives from the belief that justice cannot be equal where, simply as a result of this poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake.” *Id. See also, Britt v. North Carolina*, 404 U.S. 226, 95 S.Ct. 431, 30 L.Ed.2d 400 (1971).

6. Specifically, the United States Supreme Court instructs us:

A criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense.

*Ake*, 470 U.S. at 77. Further, it is well settled that fundamental fairness requires that an indigent defendant have “an adequate opportunity to present their claims fairly within the adversary system.” *Id.*

7. The preliminary hearing is a critical stage of the criminal trial process, “at which certain rights may be sacrificed or lost.” *McKeldin v. State*, 516 S.W.2d 82, 85 (Tenn. 1974) (superseded by statute on other grounds).
8. As far back as 1974, our Tennessee Supreme Court observed:

Every criminal lawyer ‘worth his salt’ knows the overriding importance and the manifest advantages of a preliminary hearing. In fact the failure to exploit this golden opportunity to observe the manner, demeanor and appearance of the witnesses for the prosecution, to learn the precise details of the prosecution’s case, and to engage in that happy event sometimes known as a ‘fishing expedition’, would be an inexcusable dereliction of duty, in the majority of cases.

To hold that an indigent defendant is not entitled to counsel during this critical event, is to ignore basic standards of competency and to disregard the accumulated learning and experience of the defense bar.

*Id.* at 85-86.

9. Other courts have recognized “provision for experts reasonably necessary to assist indigents is now considered essential to the operation of a just judicial

system.” *Williams v. Martin*, 618 F.2d 1021, 1025 (4th Cir. 1980). The denial of funding for expert services has been held a deprivation of the effective assistance of counsel and due process of law in violation of the Sixth and Fourteenth Amendments. *Id.* at 1027; *Mason v. Arizona*, 504 F.2d 1345, 1351 (9th Cir. 1974).

10. Further, the Supreme Court has held that the right to counsel extends to all critical stages of a criminal prosecution. *Coleman v. Alabama*, 399 U.S. 1, 7 (1970). The Court considered a critical stage to be any point that “the defendant would be subject to ‘potential’ prejudice without counsel.” *Peoples v. Lafler*, 734 F.3d 503, 518 (6th Cir. 2013) (emphasis added).

11. Having established that the defendant at a preliminary hearing is entitled to counsel, and to the effective assistance of counsel, and further that an indigent defendant is entitled to funds to permit him to put together the building blocks of a defense, the inexorable conclusion is that an indigent defendant is entitled to funding for necessary experts and services at the preliminary hearing stage of the criminal trial process.

12. At the initial stage of the proceeding, critical evidence can be lost if not properly preserved. This Court is mindful that it is not uncommon for periods of several months to pass between the time of arrest and indictment. In that time witness statements must be taken from people who could otherwise move away or have their memories fade. Evidence, such as security videos from stores, can be lost simply because the video owner does not preserve it.<sup>3</sup>

13. These witness interviews are the necessary building blocks of an adequate preliminary hearing and the effective assistance of counsel at the preliminary

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<sup>3</sup> This Court recognizes that law enforcement has no duty to obtain evidence, and so often it falls to the defense to obtain these types of videos or statements. *See State v. Ferguson*, 2 S.W.3d 912 (Tenn. 1999).

hearing. It would be inapposite for this Court to hold that conducting a preliminary hearing without making an effort to locate and interview the witnesses and/or located and examine video or other proof was effective assistance of counsel. In cases where there are witnesses to interview and an indigent defendant is denied the services of an investigator to conduct those interviews, that defendant cannot receive effective assistance of counsel and is denied what the basic standards of fundamental fairness set forth by the United States Supreme Court in *Ake*.

14. In terms of the preservation of evidence, the denial of an investigator can result in the defendant's inability to gather and preserve evidence, such as store videos, which would otherwise be lost to the passage of time between the arraignment in Sessions Court and indictment. To deny the defendant the ability to gather and preserve evidence, especially exculpatory evidence, is to deny that defendant a fundamentally fair trial process.
15. It is on this point that there is an unfortunate chasm between the resources made available to indigent persons who are appointed the Public Defender and those who are appointed members of the private bar. While the Public Defender's office is funded through a budget and has investigators on staff who can be assigned to any case at any time, the private bar is only granted access to resources on a case-by-case basis. The denial of this motion will result in an equal protection violation, as Mr. Allen will be deprived of useful and necessary services which are available to defendants who are represented by the Public Defender's office.

16. If Mr. Allen is not provided with the funds to obtain an investigator, he will be deprived of due process of law, the equal protection of the laws, the effective assistance of counsel, the right to present a defense, and his rights under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, §§ 8, 9, and 16 of the Tennessee State Constitution will be violated.

17. Further, Mr. Lamb's hourly rate and the estimated total costs of the investigation are reasonable in comparison with the rates charged by similar experts in this field.

After discussing this case with undersigned counsel, this Court has been advised that Mr. Lamb performs his services at a rate of \$50.00 per hour and that a budget of \$2,000 will be sufficient for this stage of the investigation. The Court finds that this hourly rate and the total estimated charges for these services are reasonable and competitive based on comparisons with the rates and amounts charged by other similar board-certified experts in this field. The Court further finds that these expenditures are a necessary amount required to meet minimal constitutional standards for the performance of the defense function in this cause.

IT IS, THEREFORE, ORDERED, that counsel be allowed to retain the services of Gary Lamb, a private investigator, whose present business address is 6900 Hospitality Circle, Knoxville, TN 37909, to provide investigative services in this case.

Total expenditures for Mr. Lamb under this order should not exceed Two Thousand Dollars (\$2,000) at a rate of Fifty Dollars (\$50) per hour plus his necessary expenses.

Expenses, such as copying and other incidentals, shall be compensated and otherwise paid consistent with the regular rates established by the Administrative Office of the Courts

and/or the Tennessee Supreme Court. The total authorization under the previous paragraph is \$2,000.00 plus expenses.

Additional expenses such as long-distance telephone charges, mileage, meals, parking, photocopying, computerized research, and miscellaneous expenses as defined in Rule 13 of the Tennessee Rules of the Supreme Court, § 4(a)(3)(1), shall be compensated by the regular rates established by the State of Tennessee.

The Court will allow counsel for Mr. Allen to approach the Court with an additional request for funding should the allocated funds prove to be insufficient.

ENTER this the 9 day of September 2020.

  
\_\_\_\_\_  
Judge, Knox County General Sessions Court

FILED  
BY HUBBARD  
13 SEP 10 AM 11:56  
CLERK OF COURT  
KNOX COUNTY, TENN.

**APPROVED FOR ENTRY:**



Cullen M. Wojcik  
BPR # 030564



Joshua D. Hedrick,  
BPR # 025444  
Whitt, Cooper, Hedrick & Wojcik  
607 Market St.  
Suite 1100  
Knoxville, TN 37902  
(865) 524-8106

*Attorneys for Mr. Allen*

IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

VONDRE ALLEN,

Defendant.

)  
)  
)  
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)  
)  
)

Warrant No.: @1365959  
First Degree Murder

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**EX PARTE SEALED MOTION FOR FUNDS FOR INVESTIGATOR**

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Comes now Vondre Allen, by and through undersigned counsel, and moves this Court, *ex parte*, under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, §§ 8, 9, and 16 of the Tennessee Constitutions, *Tenn. Code Ann.* § 40-14-207(b) and Rule 13 of the *Rules of the Tennessee Supreme Court*, for an order that he be provided funds for the services of a private investigator to assist in the preparation of his defense.

In support of this Motion, Mr. Allen would show as follows:

1. Mr. Allen is charged in the above-captioned warrant with the offense of first-degree murder. If convicted, he faces a punishment of life imprisonment.
2. As is more fully set forth in the attached uniform affidavit of indigency, Mr. Allen is an indigent defendant, without the means to hire the requested investigator.
3. Mr. Allen is in custody and unable to afford bail.
4. It is apparent from Counsels' initial investigation into the facts of this matter that there are a number of civilian witnesses who need to be located and interviewed to ensure that their statements are identified and preserved. Counsel cannot conduct these interviews alone without making themselves necessary witnesses

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BY HONORABLE JUDGE  
JAMES L. HARRIS

and therefore creating the very real possibility of a conflict of interest developing later in the case.

5. Specifically, Counsel are advised by the American Bar Association's Standards for Criminal Justice which assert that counsel must follow prevailing professional norms in making the decision about how an investigation be conducted and must "avoid the prospect of having to testify personally about the content of a witness interview" or other discovery during investigation. *See* ABA Standards for Criminal Justice 4-4.3(f) (4th ed. 2017).
6. Counsel request these funds to retain the services of Mr. Gary Lamb, a licensed private investigator who works in Knoxville, Tennessee. Mr. Lamb has a long career of investigative work and has been approved as an investigator through the courts and the Administrative Office of the Courts in hundreds of cases over many years. Mr. Lamb performs his services at a rate of \$50.00 per hour, and believes that this stage of the case will require a budget of \$2,000 to perform all of the necessary witness interviews and other related investigative tasks (such as locating the witnesses and reporting on the interview results).
7. Without this service, counsel for Mr. Allen cannot provide the effective assistance of counsel to him. Without this service, Mr. Allen will be deprived of due process of law at a critical stage in the proceedings.
8. It is a well-established rule that "when the State brings its judicial power to bear against an indigent defendant in a criminal proceeding, it must take steps to ensure that the accused has a fair opportunity to present his defense." *Ake v. Oklahoma*, 470 U.S. 68, 76, 105 S.Ct. 1087, 1092, 84 L.Ed.2d 53, 61 (1984). The United States Supreme Court, in *Ake*, held that this principle of law is grounded

in the Fourteenth Amendment's due process guarantee of fundamental fairness and "derives from the belief that justice cannot be equal where, simply as a result of this poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake." *Id. See also, Britt v. North Carolina*, 404 U.S. 226, 95 S.Ct. 431, 30 L.Ed.2d 400 (1971).

9. Specifically, the United States Supreme Court instructs us:

A criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense.

*Ake*, 470 U.S. at 77. Further, it is well settled that fundamental fairness requires that an indigent defendant have "an adequate opportunity to present [his] claims fairly within the adversary system." *Id.*

10. The preliminary hearing is a critical stage of the criminal trial process, "at which certain rights may be sacrificed or lost." *McKeldin v. State*, 516 S.W.2d 82, 85 (Tenn. 1974) (superseded by statute on other grounds).

11. As far back as 1974, our Tennessee Supreme Court observed:

Every criminal lawyer 'worth his salt' knows the overriding importance and the manifest advantages of a preliminary hearing. In fact the failure to exploit this golden opportunity to observe the manner, demeanor and appearance of the witnesses for the prosecution, to learn the precise details of the prosecution's case, and to engage in that happy event sometimes known as a 'fishing expedition', would be an inexcusable dereliction of duty, in the majority of cases.

To hold that an indigent defendant is not entitled to counsel during this critical event, is to ignore basic standards of competency and to disregard the accumulated learning and experience of the defense bar.

*Id.* at 85-86.

12. Other courts have recognized “provision for experts reasonably necessary to assist indigents is now considered essential to the operation of a just judicial system.” *Williams v. Martin*, 618 F.2d 1021, 1025 (4th Cir. 1980). The denial of funding for expert services has been held a deprivation of the effective assistance of counsel and due process of law in violation of the Sixth and Fourteenth Amendments. *Id.* at 1027; *Mason v. Arizona*, 504 F.2d 1345, 1351 (9th Cir. 1974).
13. Further, the Supreme Court has held that the right to counsel extends to all critical stages of a criminal prosecution. *Coleman v. Alabama*, 399 U.S. 1, 7 (1970). The Court considered a critical stage to be any point that “the defendant would be subject to ‘*potential*’ prejudice without counsel.” *Peoples v. Lafler*, 734 F.3d 503, 518 (6th Cir. 2013) (emphasis added).
14. Having established that the defendant at a preliminary hearing is entitled to counsel, and to the effective assistance of counsel, and further that an indigent defendant is entitled to funds to permit him to put together the building blocks of a defense, the inexorable conclusion is that an indigent defendant is entitled to funding for necessary experts and services at the preliminary hearing stage of the criminal trial process.
15. In the initial stages of a criminal proceeding, critical evidence can be lost if not properly preserved. As this Honorable Court is well aware, it is not uncommon for periods of several months to pass between the time of arrest and indictment. In that time witness statements must be taken from people who could otherwise

move away or have their memories fade. Evidence, such as security videos from stores, can be lost simply because the video owner does not preserve it.<sup>1</sup>

16. Witness interviews and evidence collection are the necessary building blocks of an adequate preliminary hearing and the effective assistance of counsel at the preliminary hearing. It would be inapposite to hold that conducting a preliminary hearing without making an effort to locate and interview the witnesses and/or locate and examine video or other proof was effective assistance of counsel. In cases where there are witnesses to interview and an indigent defendant is denied the services of an investigator to conduct those interviews, that defendant cannot receive effective assistance of counsel and is denied the basic standards of fundamental fairness set forth by the United States Supreme Court in *Ake*.
17. In terms of the preservation of evidence, the denial of an investigator can result in the defendant's inability to gather and preserve evidence, such as store videos, which would otherwise be lost to the passage of time between the arraignment in Sessions Court and indictment. To deny the defendant the ability to gather and preserve evidence, especially exculpatory evidence, is to deny that defendant a fundamentally fair trial process.
18. It is on this point that there is an unfortunate chasm between the resources made available to indigent persons who are appointed the Public Defender and those who are appointed members of the private bar. While the Public Defender's office is funded through a budget and has investigators on staff who can be assigned to any case at any time, the private bar is only granted access to

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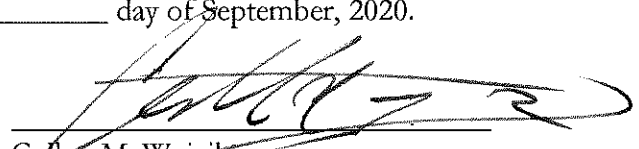
<sup>1</sup> As this Honorable Court knows, law enforcement has no duty to obtain evidence, and so often it falls to the defense to obtain these types of videos or statements. *See State v. Ferguson*, 2 S.W.3d 912 (Tenn. 1999).

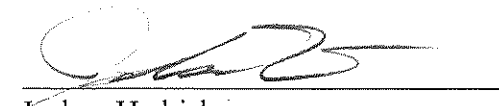
resources on a case-by-case basis. The denial of this motion will result in an equal protection violation, as Mr. Allen will be deprived of useful and necessary services which are available to defendants who are represented by the Public Defender's office.

19. If Mr. Allen is not provided with the funds to obtain an investigator, he will be deprived of due process of law, the equal protection of the laws, the effective assistance of counsel, and the right to present a defense. Such denial would also be a violation of Mr. Allen's rights under the Sixth, Eighth, and Fourteenth Amendments to the United State Constitution, and Article I, §§ 8, 9, and 16 of the Tennessee State Constitution.
20. Undersigned counsel respectfully submit that the United States and Tennessee Constitutions and well-established federal and Tennessee case law clearly mandate that Mr. Allen be provided the necessary funding to secure an investigator to assist him in fully exploring, developing, and preserving the necessary building blocks of his defense.
21. Mr. Allen relies on the accompanying affidavit of undersigned counsel, which sets forth the specific and immediate needs for the requested expert services in his case.

For the foregoing reasons, Vondre Allen respectfully requests this Court to order that he be provided sufficient funds to obtain an investigator and that those funds be made available to undersigned counsel immediately.

Respectfully submitted this the 9<sup>th</sup> day of September, 2020.

  
Cullen M. Wojcik  
BPR #030564

  
\_\_\_\_\_  
Joshua Hedrick

BPR # 025444

Whitt, Cooper, Hedrick & Wojcik

607 Market St.

Suite 1100

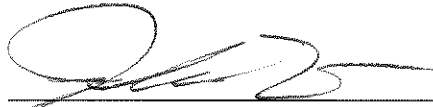
Knoxville, TN 37902

(865) 524-8106

*Attorneys for Mr. Allen*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing has **NOT** been forwarded to the District Attorney General for the Sixth Judicial District of the State of Tennessee as this motion was filed under seal.

  
\_\_\_\_\_  
Joshua D. Hedrick,  
Attorney for Mr. Allen

FAX 215-3733

No. 6163 P. 2

## IN GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE

DOCKET NO. 01365959

vs.

Allen, Vondre be 219

## UNIFORM AFFIDAVIT OF INDIGENCY

## Part I

Comes the defendant, subject to the penalty and perjury, makes oath of the following facts

1. Full Name: Vondre Allen
  2. Any other names ever used: \_\_\_\_\_
  3. Address: 3200 W. Valley
  4. Telephone No(s): (Home) 605-386-4651 (Work) \_\_\_\_\_ (Email) \_\_\_\_\_
  5. Are you currently employed? ☐ Yes ☒ No Where? \_\_\_\_\_
  6. Income \$ 0 ☐ Weekly ☐ Bi-weekly ☐ Monthly 7. Date of Birth: 02/21/1996
  8. Do you receive government assistance or pensions? ☐ Disability/SSI ☐ AFDC ☐ Other: \_\_\_\_\_
  9. Do you own property? ☐ Yes ☒ No What kind of property do you own? ☐ House ☐ Car ☐ Other: \_\_\_\_\_
  10. Are you or your family going to be able to post bond and/or hire an attorney? ☐ Yes ☒ No
  11. Are you now in custody? ☒ Yes ☐ No If so, how long have you been in custody? 2 weeks
- If a defendant is in custody, unable to make bond and the answers to questions one (1) through eleven (11) make it clear that the defendant has no resources to hire a private attorney, skip Part II and complete Part III. If Part II is to be completed, do not list items already listed in Part I.

## Part II

12. Name and ages of all dependents: Name: \_\_\_\_\_ Age: \_\_\_\_\_ Relationship: \_\_\_\_\_  
Name: \_\_\_\_\_ Age: \_\_\_\_\_ Relationship: \_\_\_\_\_  
Name: \_\_\_\_\_ Age: \_\_\_\_\_ Relationship: \_\_\_\_\_
13. I have met with the following lawyer(s), have attempted to hire said lawyer(s) to represent me, and having been unable to do so:  
Name: \_\_\_\_\_ Address: \_\_\_\_\_
14. All income from all sources, including, but not limited to wages, interest, gifts, AFDC, SSI, Social Security, retirement, disability, pension, unemployment, alimony, worker's compensation, etc.: \$ \_\_\_\_\_ per \_\_\_\_\_ from: \_\_\_\_\_  
\$ \_\_\_\_\_ per \_\_\_\_\_ from: \_\_\_\_\_
15. All money available to me from any source: ☐ Cash ☐ Checking ☐ Savings ☐ CD Accounts-give Acct. No. & balances
16. Debts owed to me: \$ \_\_\_\_\_ Credit Card(s): Account Numbers, Balance, Credit Limit, Visa/MasterCard, etc.
17. All vehicles/vessels/real estate owned by me, solely or jointly, within the last six months (including, but not limited to cars, trucks, motorcycles, farm equipment, boats, land, lots, houses, mobile homes, etc.)  
Value \$ \_\_\_\_\_ Amt. Owed: \_\_\_\_\_  
Value \$ \_\_\_\_\_ Amt. Owed: \_\_\_\_\_  
Value \$ \_\_\_\_\_ Amt. Owed: \_\_\_\_\_
18. All assets or property not already listed owned within the last six months or expect in the future:  
Value: \_\_\_\_\_ \$ Amt. Owed: \_\_\_\_\_
19. The last income tax return filed was the year \_\_\_\_\_, and it reflected a net income of \$ \_\_\_\_\_, I will file a copy if required
20. I am out of jail on bond of \$ \_\_\_\_\_ made by \_\_\_\_\_, the money to make bond, was paid by \_\_\_\_\_

## Part III

21. Acknowledging that I am still under oath, I certify I have listed in Parts I and II all assets in which I hold or expect to hold any legal or equitable interest.
22. I am financially unable to obtain the assistance of a lawyer and request the Court to appoint a lawyer for me.
23. I understand that it is a Class A Misdemeanor for which I can be sentenced to jail for up to 11 months and 29 days or be fined up to \$2500.00 or both if I intentionally or knowingly misrepresent, falsify, or withhold any information required in the affidavit. I also understand that I may be required by the Court to produce other information in support of my request for an attorney.

This 0 day of August, 2020

Defendant

Sworn to and subscribed before me, this 7 day of August, 2020

JUDGE/MAGISTRATE

**IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE**

**STATE OF TENNESSEE**

v.

**VONDRE ALLEN,**

Defendant.

**Warrant No. @1365959**  
First Degree Murder

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**AFFIDAVIT IN SUPPORT OF DEFENDANT'S EX-PARTE SEALED MOTION  
FOR FUNDS FOR AN INVESTIGATOR**

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The affiant, Joshua D. Hedrick, being duly sworn, states as follows:

1. I received a law degree from the University of Memphis in 2006. I have practiced in the State of Tennessee since 2006.
2. My co-counsel, Cullen M. Wojcik, received his law degree from the University of California, Hastings College of the Law in 2011. He has practiced in the State of Tennessee since 2011.
3. My co-counsel and I represent Mr. Vondre Allen, who is an indigent defendant without the means to hire the requested investigator.
4. I have included with these pleadings a uniform affidavit of indigency which demonstrates that Mr. Allen is an indigent person. Mr. Allen is also in custody and unable to afford bail.
5. Mr. Allen is charged with the offense of first-degree murder, and this case is currently pending before the General Sessions Court for Knox County, Tennessee.
6. It is apparent from our initial investigation into the facts of this matter that there are a number of civilian witnesses who need to be located and interviewed to ensure that their statements are identified and preserved.

7. We cannot conduct these interviews alone without making ourselves necessary witnesses and therefore creating the very real possibility of a conflict of interest developing later in the case.
8. We are advised by the American Bar Association's Standards for Criminal Justice which assert that counsel must follow prevailing professional norms in making the decision about how an investigation be conducted and must "avoid the prospect of having to testify personally about the content of a witness interview" or other discovery during investigation. *See* ABA Standards for Criminal Justice 4-4.3(f) (4th ed. 2017).
9. We request funds to retain the services of Mr. Gary Lamb, a licensed private investigator who works in Knoxville, Tennessee. I have worked with Mr. Lamb for more than 13 years, and know that he has a long and successful career of investigative work. Mr. Lamb has been approved as an investigator through the courts and the Administrative Office of the Courts in hundreds of cases over many years. Mr. Lamb performs his services at a rate of \$50.00 per hour, and believes that this stage of the case will require a budget of \$2,000 to perform all of the necessary witness interviews and other related investigative tasks (such as locating the witnesses and reporting on the interview results).
10. Without this service, we cannot provide the effective assistance of counsel to him. Without this service, Mr. Allen will be deprived of due process of law at a critical stage in the proceedings.
11. We know the preliminary hearing to be a critical stage of the criminal trial process, "at which certain rights may be sacrificed or lost." *McKeldin v. State*, 516 S.W.2d 82, 85 (Tenn. 1974) (superseded by statute on other grounds).

12. We agree wholeheartedly and fully adopt the words of our Tennessee Supreme Court when they wrote:

Every criminal lawyer ‘worth his salt’ knows the overriding importance and the manifest advantages of a preliminary hearing. In fact the failure to exploit this golden opportunity to observe the manner, demeanor and appearance of the witnesses for the prosecution, to learn the precise details of the prosecution’s case, and to engage in that happy event sometimes known as a ‘fishing expedition’, would be an inexcusable dereliction of duty, in the majority of cases.

To hold that an indigent defendant is not entitled to counsel during this critical event, is to ignore basic standards of competency and to disregard the accumulated learning and experience of the defense bar.

*Id.* at 85-86.

13. We know that other courts have recognized “provision for experts reasonably necessary to assist indigents is now considered essential to the operation of a just judicial system.” *Williams v. Martin*, 618 F.2d 1021, 1025 (4th Cir. 1980). The denial of funding for expert services has been held a deprivation of the effective assistance of counsel and due process of law in violation of the Sixth and Fourteenth Amendments. *Id.* at 1027; *Mason v. Arizona*, 504 F.2d 1345, 1351 (9th Cir. 1974).
14. We also know that the Supreme Court has held that the right to counsel extends to all critical stages of a criminal prosecution. *Coleman v. Alabama*, 399 U.S. 1, 7 (1970). The Court considered a critical stage to be any point that “the defendant would be subject to ‘potential’ prejudice without counsel.” *Peoples v. Lafler*, 734 F.3d 503, 518 (6th Cir. 2013) (emphasis added).
15. We believe that an indigent defendant is entitled to funding for necessary experts and services at the preliminary hearing stage of the criminal trial process. It does

a disservice to our client, to fundamental fairness, and to our system of justice as a whole for counsel to essentially “wing it” on a first-degree murder preliminary hearing.

16. In the initial stages of a criminal proceeding, critical evidence can be lost if not properly preserved. As this Honorable Court is well aware, it is not uncommon for periods of several months to pass between the time of arrest and indictment. In my career this time period has usually run from four to six months, although sometimes longer.
17. In that time witness statements must be taken from people who could otherwise move away or have their memories fade. Evidence, such as security videos from stores, can be lost simply because the video owner does not preserve it.<sup>2</sup>
18. I have personally taken over cases in criminal court only to find that the witnesses now cannot be located, or have died, or simply do not have a very clear memory of what they saw last year.
19. Witness interviews are the necessary building blocks of an adequate preliminary hearing and the effective assistance of counsel at the preliminary hearing. It would be inapposite to hold that conducting a preliminary hearing without making an effort to locate and interview the witnesses and/or locate and examine video or other proof was effective assistance of counsel. In cases where there are witnesses to interview and an indigent defendant is denied the services of an investigator to conduct those interviews, that defendant cannot receive effective assistance of counsel and is denied what the basic standards of fundamental fairness set forth by the United States Supreme Court in *Ake*.


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<sup>2</sup> As this Honorable Court knows, law enforcement has no duty to obtain evidence, and so often it falls to the defense to obtain these types of videos or statements. See *State v. Ferguson*, 2 S.W.3d 91, (Tenn. 1999).


20. The denial of an investigator can result in the defendant's inability to gather and preserve evidence, such as store videos, which would otherwise be lost to the passage of time between the arraignment in Sessions Court and indictment. To deny the defendant the ability to gather and preserve evidence, especially exculpatory evidence, is to deny that defendant a fundamentally fair trial process.
21. While the Public Defender's office is funded through a budget and has investigators on staff who can be assigned to any case at any time, the private bar is only granted access to resources on a case-by-case basis. The denial of this motion will result in an equal protection violation, as Mr. Allen will be deprived of useful and necessary services which are available to defendants who are represented by the Public Defender's office.
22. If Mr. Allen is not provided with the funds to obtain an investigator, he will be deprived of due process of law, the equal protection of the laws, the effective assistance of counsel, the right to present a defense. Such a denial would also violate his rights under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, §§ 8, 9, and 16 of the Tennessee State Constitution.
23. We respectfully submit that the United States and Tennessee Constitutions and well-established federal and Tennessee case law clearly mandate that Mr. Allen be provided the necessary funding to secure an investigator to assist him in fully exploring, developing, and preserving the necessary building blocks of his defense.
24. Without this funding, we cannot properly explore, investigate, preserve, and present a defense on behalf of our client, Mr. Vondre Allen.

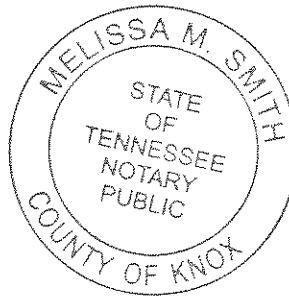
25. We respectfully request that this Court authorize funding to allow Mr. Allen to secure the services of an investigator.

Further, affiant saith not.

  
Joshua D. Hedrick, Affiant

Sworn to and subscribed before me  
This 9<sup>th</sup> day of September, 2020.

  
NOTARY PUBLIC  
My commission expires: 10.10.2020



IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

VONDRE ALLEN,

Defendant.

Warrant No.: @1365959  
First Degree Murder

---

NOTICE OF DENIAL OF FUNDING

---

Comes now Vondre Allen, by and through undersigned counsel, and gives notice that the Administrative Office of the Courts has declined to honor the order entered by this Honorable Court. Filed along with this notice is the response from the Administrative Office of the Courts.

Respectfully submitted this the 30<sup>th</sup> day of September, 2020.

*Cullen Wojcik by JDH*

Cullen M. Wojcik  
BPR #030564



Joshua Hedrick  
BPR # 025444  
Whitt, Cooper, Hedrick & Wojcik  
607 Market St.  
Suite 1100  
Knoxville, TN 37902  
(865) 524-8106

*Attorneys for Mr. Allen*

FILED  
BY MIREHANNON

2020 SEP 30 AM 11:37

CLERK OF THE COURT  
DIVISION

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing has been forwarded to the District Attorney General for the Sixth Judicial District of the State of Tennessee on the date the foregoing was filed with the clerk.

A handwritten signature in black ink, appearing to read 'Joshua D. Hedrick', written over a horizontal line.

Joshua D. Hedrick,  
Attorney for Mr. Allen

# Vondre Allen Order

From: Lacy Wilber <lacy.wilber@tncourts.gov>

To: hedrick@knoxdefense.com <hedrick@knoxdefense.com>

---

Mr. Hedrick,

The AOC cannot approve this order because it is in General Sessions Court.

Please contact me if you have any questions.

Thank you,

Lacy

Lacy Wilber | Assistant General Counsel

Tennessee Supreme Court

Administrative Office of the Courts

511 Union St, Suite 600

Nashville, TN 37219

615-741-2687

Fax: 615-253-0017

---

## Re: Vondre Allen Order

From: Joshua D. Hedrick <hedrick@knoxdefense.com>  
To: Lacy Wilber <lacy.wilber@tncourts.gov>

---

Lacy-

Thanks for getting back to me.

Is that a result of the language of Rule 13 or some other regulation?

Is there a process by which that decision can be reviewed by the Court or the Chief Justice?

- Josh

**Joshua D. Hedrick**  
607 Market Street, Suite 1100  
Knoxville, Tennessee 37902

hedrick@knoxdefense.com  
www.knoxdefense.com  
(865) 524-8106



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On Sep 22, 2020, at 3:23 PM, Lacy Wilber <Lacy.Wilber@tncourts.gov> wrote:

Mr. Hedrick,

The AOC cannot approve this order because it is in General Sessions Court.

Please contact me if you have any questions.

Thank you,

Lacy

Lacy Wilber | Assistant General Counsel

Tennessee Supreme Court

Administrative Office of the Courts

511 Union St, Suite 600

Nashville, TN 37219

615-741-2687

Fax: 615-253-0017

---

## Re: Vondre Allen Order

From: Lacy Wilber <lacy.wilber@tncourts.gov>

To: hedrick@knoxdefense.com <hedrick@knoxdefense.com>

---

No. There's been no change in the Rule. Rule 13, section 5(a)(1) provides that funds shall be available "in the trial." Sessions courts are not trial courts.

To my knowledge, funds for investigators or experts have never been available at Sessions level. Chief Justice Bivins has previously clarified to the AOC that there are no funds for investigators or experts at Sessions level.

I hope this helps. Please let me know if you have further questions.

Lacy

Lacy Wilber | Assistant General Counsel  
Tennessee Supreme Court  
Administrative Office of the Courts  
511 Union St, Suite 600  
Nashville, TN 37219  
615-741-2687  
Fax: 615-253-0017

>>> "Joshua D. Hedrick" <hedrick@knoxdefense.com> 9/22/2020 2:53 PM >>>

Lacy-

Thanks for getting back to me.

Is that a result of the language of Rule 13 or some other regulation?

Is there a process by which that decision can be reviewed by the Court or the Chief Justice?

- Josh

**Joshua D. Hedrick**  
607 Market Street, Suite 1100  
Knoxville, Tennessee 37902

hedrick@knoxdefense.com  
www.knoxdefense.com  
(865) 524-8106



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Mr. Hedrick,

The AOC cannot approve this order because it is in General Sessions Court.

Please contact me if you have any questions.

Thank you,

Lacy

Lacy Wilber | Assistant General Counsel  
Tennessee Supreme Court  
Administrative Office of the Courts  
511 Union St, Suite 600  
Nashville, TN 37219  
615-741-2687  
Fax: 615-253-0017

---

IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE,

Plaintiff

v.

VONDRE ALLEN,

Defendant.

Warrant No.: @1365959  
First Degree Murder

ORDER UNSEALING SEALED DOCUMENT

Upon oral motion by counsel for the Defendant, and for good cause shown, it is hereby ORDERED that the Order Approving Funds to Hire an Investigator entered and sealed by this Honorable Court on September 9, 2020, be hereby unsealed.

ENTER this the 15 day of December, 2020.

Judge, Knox County General Sessions Court

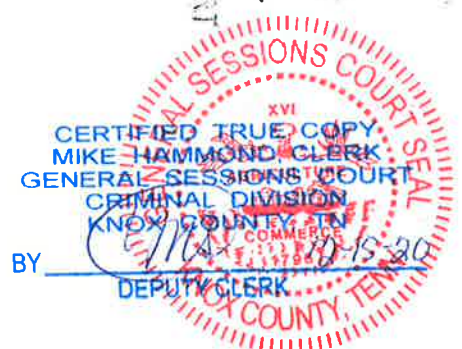
APPROVED FOR ENTRY:

*Nathaniel H. Evans*

Nathaniel H. Evans (BPR #026292)  
THE EVANS LAW FIRM  
625 Market Street, Suite 404  
Knoxville, TN 37902  
(865) 523-2755  
nate@evanslawfirm.legal  
Attorney for Vondre Allen

2020 DEC 15 AM 9:44

FILED  
BY MIKE HAMMOND



**IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE**  
**FELONY DIVISION**

2020 OCT 14 AM 9:01

STATE OF TENNESSEE )

v. )

DANNY FRAZIER )

No. @1372993, @1373983


**NOTICE OF DENIAL OF FUNDING**

The defendant, Danny Frazier, by and through undersigned counsel, hereby gives notice that the Tennessee Administrative Office of the Courts has declined to honor this Court's order approving funding to retain a necessary expert in this case. The letter denying funding is attached to this notice.

RESPECTFULLY SUBMITTED,

ERIC M. LUTTON  
PUBLIC DEFENDER, SIXTH JUDICIAL DISTRICT

BY: \_\_\_\_\_

  
TYLER M. CAVINESS, BPR# 030273  
ASSISTANT DISTRICT PUBLIC DEFENDER  
1101 Liberty Street  
Knoxville, TN 37919  
Phone: (865) 594-6120  
(This signature was electronically generated  
pursuant to Tenn. Code Ann. § 16-1-115.)

**CERTIFICATE OF SERVICE**

I, Tyler Caviness, do hereby certify that a true and exact copy of this motion has been delivered to the Office of the District Attorney General for the Sixth Judicial District, 400 W. Main Street, Knoxville, TN 37902, on this, the 14th day of October, 2020.

  
\_\_\_\_\_  
TYLER M. CAVINESS



# *Supreme Court of Tennessee*

Administrative Office of the Courts  
Nashville City Center, Suite 600  
511 Union Street  
Nashville, Tennessee 37219  
615 / 741-2687 or 800 / 448-7970

**DEBORAH TAYLOR TATE**  
Director

Assistant Public Defender Tyler Caviness  
1101 Liberty Street  
Knoxville, TN 37919  
*Via email*

October 13, 2020

Mr. Caviness,

This letter is to inform you that Chief Justice Bivins has held that Tennessee Supreme Court Rule 13, section 5 does not provide for expert or investigative funds in General Sessions Courts. The Rule allows for expert and investigative funds "at trial," so once a grand jury has indicted the defendant or there has been a presentment and the case is in Circuit or Criminal Court, you may then submit your motion and order for AOC prior approval review.

Sincerely,

A handwritten signature in cursive script that reads "Lacy Wilber".

Lacy Wilber  
Assistant General Counsel

**IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE**  
**DIVISION** \_\_\_\_\_

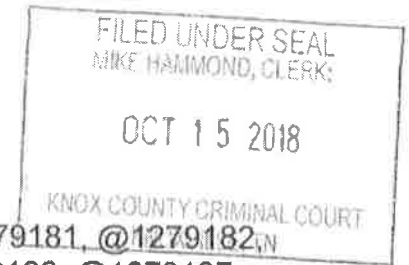
STATE OF TENNESSEE

v.

ZACHARI TYLER MOORE

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)

Warrant Nos. @1279181, @1279182,  
@1279185, @1279186, @1279187  
(IN GRAND JURY)



**ORDER APPROVING FUNDS TO HIRE AN**  
**ACCIDENT RECONSTRUCTIONIST FILED UNDER SEAL**

Counsel for Mr. Moore has advised this Court that he is in need of an expert to reconstruct the facts and circumstances of a fatal automobile accident which occurred on or about September 30, 2018 in Knox County, Tennessee to determine if this accident was the result of his client's reckless behavior and/or impairment, or if it was the result of faulty road design and or ordinary negligence. Counsel has contacted James E. Norris II, PE, a practicing civil engineer and accident reconstruction expert. Mr. Norris has previously been qualified in the field of accident reconstruction in the Knox County Criminal Courts as well as other Tennessee courts and courts around the country. Mr. Norris has previously served as an accident reconstruction expert for undersigned counsel. Having listened to the statements and arguments of undersigned counsel, hearing a summary of the facts of this case, reviewing Mr. Norris' qualifications as set out in his curriculum vitae, and reviewing Mr. Stephens' Affidavit and the Affidavit of Mr. Norris, the Court is convinced, and so finds, that Mr. Moore has made a particularized showing of need for the requested expert services and that Mr. Norris possesses the qualifications to perform the requested work.

Having found that undersigned counsel has made a particularized showing of need for the requested services, the Court now turns its attention to the issue of timing for this request.

It is obvious to this Court that Rule 13 intends to impose time constraints regarding the availability of expert funding to indigent defendants. This limitation is contained in the opening sentence of Rule 13, Section 5(a)(1), **Experts, Investigators, and other support services**, "In the trial and direct appeal ... " This Court has been advised by undersigned counsel regarding conversations he has had with representatives of the Administrative Office of the Courts who have indicated that funding for expert services is not available unless and until an Indictment is returned against an indigent defendant. An Indictment is not expected in this case for months.

Undersigned counsel's proof regarding his particularized showing of need included two Affidavits, one from undersigned counsel himself and a second from Affiant's proposed accident reconstruction expert, Mr. Norris. Both Affidavits maintain that with regard to the requested funding request, time is of the essence.

In Mr. Norris' Affidavit, he maintained that travelling to the accident scene where he would conduct a thorough inspection including photographing, measuring, and collecting data is a "critical portion" of any accident analysis and reconstruction. Further, travelling to the location where the vehicles are stored and inspecting, photographing, taking measurements, and collecting data is likewise a "critical portion" of any accident analysis and reconstruction. Mr. Norris maintains in his Affidavit that with passing time and exposure to weather, physical evidence such as tire marks, furrow marks, scrapes, gouges, debris, fluid stains, etc. **"will deteriorate and/or completely disappear."**

Further, Mr. Norris points out that paint marks and measurements made as a part of the police investigation will, with the passing of time, deteriorate. Mr. Norris states that the area where this accident occurred is "an area that has a high frequency of vehicular accidents." He maintains that a thorough inspection of the accident scene, in a timely manner, would help him evaluate and eliminate evidence from other vehicular accidents.

In Mr. Stephens' Affidavit, he advises this Court that he has discussed this case with the Assistant District Attorney responsible for the prosecution of Mr. Moore. This Prosecutor informed Mr. Stephens that he will delay taking the case to the Grand Jury until the toxicological work-up on the defendant's blood has been completed by the Tennessee Bureau of Investigations. Though only an estimate, that time period could be six (6) months. While this Prosecutor advised Mr. Stephens that he has asked for the work to be expedited, there is no assurance that the Tennessee Bureau of Investigation will be able to honor this request. In fact, no reason was offered by the Prosecutor why the Tennessee Bureau of Investigation would move this case ahead of others "in the pipeline" other than they have been asked to do so. The Prosecutor advised Mr. Stephens that even with expedited toxicology, it will likely be February 2019 before Mr. Moore will be arraigned in criminal court. Counsel for Mr. Moore voiced skepticism that the state would make that time period but, counsel argued that even if they did, a four-month delay in getting his expert to the crime scene would result in a material loss and/or alteration of the accident scene.

This Court has been convinced that with regard to this funding request, time is of the essence. Counsel has demonstrated by his investigation as detailed in his

AFFIDAVIT IN SUPPORT OF DEFENDANT'S EX PARTE MOTION FOR FUNDS TO HIRE AN ACCIDENT RECONSTRUCTION EXPERT FILED UNDER SEAL as well as the AFFIDAVIT OF JAMES E NORRIS, II, PE that the requested expertise is needed to fully protect the rights of Mr. Moore. The Court is of the opinion that the services to be provided by Mr. Norris are necessary, and that they should be provided at this time in order for counsel to provide the effective assistance required by the United States Constitution, as well as the Tennessee Constitution. Further, this Court believes that counsel has complied with *Tenn. Code Ann. § 40-14-207(b)*, as well as *Rule 13, Supreme Court Rules*.

IT IS, THEREFORE, ORDERED, that counsel be allowed to retain the services of Mr. James E. Norris a practicing civil engineer and accident reconstruction expert employed by Parham Engineering Consultants, 4038 Gap Road, Suite 201, Knoxville, TN 37914, to conduct a full and complete reconstruction of the accident scene. Though Mr. Norris' normal hourly wage exceeds One Hundred Fifteen Dollars (\$115.00), he has agreed to work for that rate. This Court orders that the State of Tennessee reimburse James E. Norris II, PE for his work in an amount not to exceed Ten Thousand Dollars (\$10,000.00) and at an hourly rate of One Hundred Fifteen Dollars (\$115.00) per hour, which will include an on-site inspection of the accident scene, inspection of the cars involved in the accident, reviewing the investigative work of the Knoxville Police Department, consulting with counsel for Mr. Moore, preparing any and all reports, meeting with counsel in preparation for trial, and testifying at trial if necessary. This Court finds that Mr. Norris' charges of One Hundred Fifteen Dollars (\$115.00) per hour for his work and consultation is appropriate. Undersigned counsel believes Mr. Norris'

work in this case should take approximately eighty (80) to one hundred (100) hours.  
This Court finds Mr. Norris' hourly rate to be reasonable. Additionally, this Court will  
allow counsel for Mr. Moore to approach the Court with an additional request for  
compensation, should the evaluation and report of Mr. Norris appear to counsel to be  
necessary to present as evidence in the trial or sentencing of Mr. Moore.

ENTER this the 15<sup>th</sup> day of October, 2018.



JUDGE

**\*\*Denied\*\***

Per Chief Justice on 11/2/18



Lacy Wilber  
11/5/18

APPROVED FOR ENTRY:



MARK E. STEPHENS

CERTIFIED TRUE COPY  
MIKE HAMMOND, CLERK  
CRIMINAL COURT  
KNOX COUNTY, TN

BY:   
DEPUTY CLERK

**IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE**

**DIVISION** \_\_\_\_\_

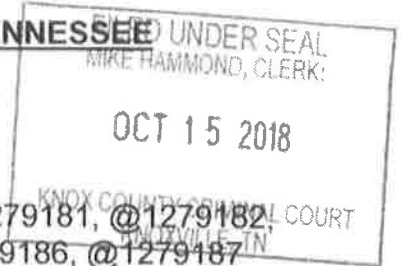
STATE OF TENNESSEE

v.

ZACHARI TYLER MOORE

)  
)  
)  
)  
)

Warrant Nos. @1279181, @1279182,  
@1279185, @1279186, @1279187  
(IN GRAND JURY)



**EX PARTE MOTION FOR FUNDS TO HIRE AN  
ACCIDENT RECONSTRUCTION EXPERT FILED UNDER SEAL**

Comes the defendant, Zachari Tyler Moore, by and through undersigned counsel, and moves this Court, pursuant to the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I, §§ 8, 9, and 16 of the Tennessee Constitution, *Tenn. Code Ann.* § 40-14-207, and Rule 13 of the *Tennessee Supreme Court Rules* for an Order authorizing the disbursement of adequate funds to provide defense counsel the opportunity to hire an accident reconstruction expert for the purposes of conducting an independent analysis of the crime scene in question and to assist the jury in determining whether Mr. Moore's actions were the result of his reckless driving and/or impairment, as the State alleges, or were accidental, as Mr. Moore maintains.

1. The State alleges that Zachari Tyler Moore committed the offenses of vehicular homicide, driving under the influence, simple possession, possession of drug paraphernalia and driving on roadways laned for traffic. These charges arose out an accident that occurred on Sunday, September 30, 2018, at Woodland Drive under the I-275 overpass in Knoxville, Tennessee. One person was killed in the accident.

2. Later that same day, September 30, 2018, warrant number @1279187 was issued charging Mr. Moore with the offense of vehicular homicide. In addition, warrant numbers @1279186, @1279185, @1279181 and @1279182 were issued

charging Mr. Moore with driving under the influence, driving on roadways lined for traffic, unlawful possession of drug paraphernalia, and simple possession respectively. Bonds have been set in Mr. Moore's cases totaling Fifty-Four Thousand Dollars (\$54,000.00).

3. Mr. Moore was arraigned on the above-captioned charges on October 1, 2018. The Judicial Commissioner determined Mr. Moore was indigent and appointed the Public Defender for the Sixth Judicial District to represent him. Mr. Moore cannot make bail and has remained in custody since the date of his arrest, September 30, 2018.

4. On October 11, 2018, Mr. Moore was scheduled to have a Preliminary Hearing. This hearing was waived and Mr. Moore's cases were bound over to the Knox County Grand Jury.

5. Because undersigned counsel is without sufficient knowledge and expertise to perform the necessary tests that an independent accident reconstruction expert would conduct, undersigned counsel believes it necessary to employ the services of such an expert to fully explore and develop the circumstances surrounding the accident in question. Further, undersigned counsel maintains that time is of the essence. An accident reconstruction expert, able to go to the crime scene now while physical evidence of the accident still exists, offers Mr. Moore the ability to challenge the state's allegations as to how this accident occurred. The jury will then be able to apply science to the allegations, facts and circumstances of this case and more fully understand Mr. Moore's conduct. If provided immediate access to an accident reconstruction expert, Mr. Moore's right to a fair trial, and other critical constitutional rights will be more fully protected.

6. If Mr. Moore is not provided with the funds to obtain an accident reconstruction expert, valuable evidence will be lost and Mr. Moore will be forced to simply accept the findings and conclusions of law enforcement with regard to how this accident occurred. Mr. Moore will be deprived due process of law, the equal protection of the laws, and counsel will be ineffective in his representation. Further, a delay in providing these essential services will most certainly violate Mr. Moore's rights under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, §§ 8, 9, and 16 of the Tennessee Constitution.

7. Mr. Moore relies on the accompanying affidavit of undersigned counsel as well as an affidavit of Mr. James Norris, a practicing civil engineer and accident reconstruction expert, setting forth the specific need for services in this case.

For the foregoing reasons, Zachari Tyler Moore respectfully requests that this Court order that he be provided sufficient funds to hire an accident reconstruction expert in order to conduct a detailed reenactment of the conduct in question to assist the jury in the determination of whether, at the time of this offense, Mr. Moore's actions were the result of his reckless and/or intentional behavior, or were accidental.

Respectfully submitted,



MARK E. STEPHENS, BPR# 007151  
District Public Defender  
1101 Liberty Street  
Knoxville, Tennessee 37919  
Telephone: (865) 594-6120  
(This signature was electronically  
generated pursuant to T.C.A. §16-1-115.)

**IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE**  
**DIVISION \_\_\_\_\_**

STATE OF TENNESSEE	)	
	)	
v.	)	Warrant Nos. @1279181, @1279182,
	)	@1279185, @1279186, @1279187
ZACHARI TYLER MOORE	)	(IN GRAND JURY)

**AFFIDAVIT IN SUPPORT OF DEFENDANT'S EX PARTE MOTION FOR**  
**FUNDS TO HIRE AN ACCIDENT RECONSTRUCTION EXPERT FILED UNDER SEAL**

The affiant, Mark Stephens, after first being duly sworn as required by law, does hereby make oath and affirm that the following is a true and correct representation of the facts:

1. That I am the elected District Public Defender for the Sixth Judicial District (Knox County) for the State of Tennessee, having assumed that position on September 1, 1990. I was re-elected on September 1, 1998, on September 1, 2006, and again on September 1, 2014. My current business address is 1101 Liberty Street, Knoxville, Tennessee 37919.

2. That on October 1, 2018, I was appointed to represent Zachari Tyler Moore following the issuance of warrant numbers @1279187, @1279186, @1279181, @1279185 and @1279182, charging Mr. Moore with vehicular homicide, driving under the influence, possession of drug paraphernalia, driving on roadways laned for traffic, and simple possession.

3. The charges in this case stem from an accident that occurred on Sunday, September 30, 2018, on Woodland Drive under the I-275 overpass in Knoxville,

Tennessee. Mr. Moore was driving a gray Ford SUV south bound on Interstate 275 south when that vehicle left the roadway ultimately striking another automobile on Woodland Ave. The vehicle struck by Mr. Moore's car was driven by Mr. Franklin Bates who was killed in the accident.

4. In order to properly defend against the State's allegations that this accident was caused as a result of Mr. Moore's reckless behavior or his impairment, Affiant needs to hire an accident reconstruction expert who possesses the expertise to look at the road design and construction, as well as the interaction of those conditions with the vehicle that Mr. Moore was operating, to assist in determining whether this accident was caused by Mr. Moore's alleged reckless behavior and/or impairment as opposed to faulty roadway design or Mr. Moore's negligence.

5. Affiant has consulted with James E. Norris II, PE, a civil engineer and accident reconstruction expert. Affiant has used Mr. Norris in the past and he has been qualified as an expert in the field of accident reconstruction in Knox County Criminal Courts. He has testified in numerous courts and has been declared an expert in numerous states in the field of accident reconstruction, including Tennessee. Mr. Norris possesses the necessary expertise to perform the requisite analysis and to assist Affiant in providing Mr. Moore with the effective assistance of counsel to which he is constitutionally entitled (See Affidavit of James E. Norris, II, PE. Attached).

6. Mr. Norris has emphasized the need to travel to the accident scene where he plans to conduct a thorough inspection including photographing, measuring, and collecting data from the scene. Mr. Norris maintains this "at-the-scene" work is a critical portion of any accident analysis and reconstruction. Further, if provided adequate

funding, Mr. Norris intends to travel to the location where the vehicles are stored and inspect, photograph, take measurements, and collect data there as well. Likewise, Mr. Norris deems these functions to be a "critical portion" of any accident analysis and reconstruction. Mr. Norris warns Affiant that with passing time and exposure to weather, physical evidence such as tire marks, furrow marks, scrapes, gouges, debris, fluid stains, etc. **"will deteriorate and/or completely disappear."** Further, Mr. Norris points out that paint marks made as a part of the police investigation will, with the passing of time, deteriorate. Finally, Mr. Norris informed Affiant that the area where this accident occurred is "an area that has a high frequency of vehicular accidents." He maintains that a thorough inspection of the accident scene, in a timely manner, would help him evaluate and eliminate evidence from other vehicular accidents. Mr. Norris believes time is of the essence.

7. Affiant has discussed this case with the Assistant District Attorney responsible for the prosecution of Mr. Moore. During this discussion, this Prosecutor informed Affiant that he will delay taking the case to the Grand Jury until the toxicological work-up on the defendant's blood has been completed by the Tennessee Bureau of Investigations. Delays of over six (6) months to obtain toxicology results are the norm, not the exception. While this Prosecutor advised Affiant that he has asked for the work to be expedited, there is no assurance that the Tennessee Bureau of Investigation will be able to honor this request. In fact, no reason was offered by the Prosecutor why the Tennessee Bureau of Investigation would move this case ahead of others "in the pipeline" other than they have been asked to do so. The Prosecutor advised Mr. Stephens that even with expedited toxicology, it will likely be February 2019

before Mr. Moore will be arraigned in criminal court. Affiant is skeptical that the state will make that time period but, even if they do, a four-month delay in getting his expert to the crime scene will result in a material loss and/or alteration of the accident scene.

8. Mr. Norris advises Affiant that his customary hourly rate exceeds Rule 13 limitations, but, if approved to work in this case, he will agree to work at the reduced hourly rate of One Hundred Fifteen Dollars (\$115.00). The estimated total cost associated with hiring Mr. Norris should not exceed Ten Thousand Dollars (\$10,000.00).

Further, Affiant saith not.

  
MARK STEPHENS, Affiant

Sworn to and subscribed before me  
this 15th day of October, 2018.

  
NOTARY PUBLIC  
My commission expires: 4-28-20



**Date:** 11/05/2018 [01:03:55 PM EST]  
**From:** Mark Stephens <mstephens@pdknox.org>  
**To:** Rachel Harmon <Rachel.Harmon@tncourts.gov>  
**Subject:** Re: Order - Zachari Moore

Thank you. however, I will need a written finding that the denial was based on timing (not being Indicted) and not a failure on my part to make a particularized showing of need.

Thanks.

--  
Mark

---

Mark Stephens  
District Public Defender  
1101 Liberty Street  
Knoxville, TN 37919  
(865) 594-6120 (Office)  
(865) 594-6169 (Fax)  
[mstephens@pdknox.org](mailto:mstephens@pdknox.org)

---

This communication may contain information that is confidential and/or protected by the attorney-client privilege and/or attorney work product doctrine. It is intended for receipt and use solely by the individual named above. If you are not the intended recipient, you are hereby notified that any disclosure, distribution, copying or taking of any action in reliance on the contents of the electronically transmitted materials is prohibited.

Rachel Harmon wrote on 11/5/18 12:39 PM:

Mark,

Because Mr. Moore has not been indicted, attached is the order denying the request for expert services pursuant to Tenn. Sup. Ct. R. 13, Section 5(a)(1).

Respectfully,

**Rachel Harmon | General Counsel**  
Tennessee Supreme Court  
Administrative Office of the Courts  
Nashville City Center Suite 600  
511 Union Street  
Nashville, Tennessee 37219  
Ph: 615.741.2687  
Fax: 615.741.6285

IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE  
DIVISION III

STATE OF TENNESSEE,

v.

NO. 114965

ZACHARI TYLER MOORE

**ORDER UNSEALING PLEADINGS**

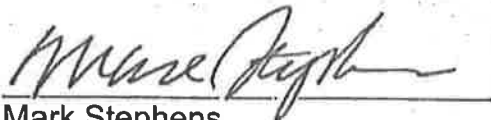
Upon oral motion of counsel, and for good cause shown, it is hereby ORDERED that the Motion, Affidavit and Order approving funds for an accident reconstruction expert in the above-styled case entered and sealed by this Honorable Court on the 15th day of October 2018, and the 8th day of March 2019, and the 15th day of April 2019 be hereby unsealed.

ENTER this the 19th day of January, 2021.



JUDGE G. SCOTT GREEN  
SIXTH JUDICIAL DISTRICT  
CRIMINAL COURT, DIVISION III

APPROVED FOR ENTRY



Mark Stephens  
Attorney for Mr. Moore  
606 W. Main Street, Ste 100  
Knoxville, TN 37902

**Exhibit 2:**  
**Affidavit of Kathryn Smith**

## AFFIDAVIT

STATE OF TENNESSEE     )  
COUNTY OF KNOX         )

Comes now the affiant, Dr. Kathryn R. Smith, Ph.D., ABPP who being duly sworn does state as follows:

1. My name is Dr. Kathryn R. Smith. I am a board-certified forensic psychologist with a subspecialty in conducting juvenile transfer waiver evaluations. I am also a Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) certified forensic examiner in which capacity I conduct court-ordered evaluations of competence to stand trial and mental condition at the time of the alleged offense for Knox County, Tennessee Courts. My office is in Knoxville, Tennessee.
2. In my practice, I have worked on numerous cases on an *ex parte* basis in which the State of Tennessee has sought to have a juvenile transferred for prosecution as an adult.
3. Based on my records, I have served as an expert for the defense in 26 such transfer waiver cases, going back to 2012.
4. In each of those cases my professional fees were approved by the judge of the Juvenile Court and later approved by the Administrative Office of the Courts. I was paid for my services by the Administrative Office of the Courts.
5. As a forensic psychologist, I am called upon in juvenile transfer cases to determine if a child meets the statutory criteria of one who is committable to an institution for the developmentally disabled or mentally ill. This opinion requires expert training and skill. This determination cannot be made by a layperson.
6. As a forensic psychologist, I am called upon to conduct a risk assessment and offer an expert opinion regarding the child's estimated level of risk for future delinquency and dangerousness to the community. This opinion requires expert training and skill. This determination cannot be made by a layperson.
7. As a forensic psychologist, I am called upon to offer an expert opinion of the child's level of social and emotional sophistication and maturity. My opinion is informed by knowledge of the scientific literature related to adolescent brain development. This opinion requires expert training and skill. This determination cannot be made by a layperson.
8. As a forensic psychologist, I am called upon to offer an expert opinion as to the child's responses to prior treatment efforts and the possibility of rehabilitation of

the child by procedures and services available in the state. This opinion requires expert training and skill. This determination cannot be made by a layperson.

9. In exploring the questions of risk for future dangerousness, level of sophistication and maturity, and possibility of rehabilitation, it is often necessary to discuss with the child the circumstances surrounding the offense of which the child stands accused. Because such a discussion centers on potentially inculpatory information, it is essential that the child have protection against self-incrimination afforded by an *ex parte* evaluation.
10. Based upon my experience as a TDMHSAS certified forensic examiner, it is my opinion that the options available to Juvenile Court judges within the court-ordered evaluation system, which are limited to assessing committability, adjudicative competency, mental condition at the time of the alleged offense, and treatment recommendations, are inadequate to address questions of risk of dangerousness, sophistication/maturity, and treatment amenability which are central questions to be considered by the judge in a transfer proceeding.

Further affiant saith not.

Kathryn R. Smith Ph.D., ABPP  
Kathryn R. Smith, Ph.D., ABPP  
Affiant

Sworn and subscribed before me this the 8th day of January, 2021,

Suzy Badger  
Notary Public

My commission expires on: 6/29/2022.

