

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE,

v.

No. B81209

PHILIP R. WORKMAN,

Defendant.

FILED 4-11-01
WILLIAM B. KEYS, CLERK
BY [Signature] D.A.

RESPONSE TO "MOTION OF THE STATE OF TENNESSEE FOR AN ORDER DIRECTING THE DEFENDANT TO PRODUCE ALL UNEDITED VIDEO TAPES, AUDIO TAPES, WRITTEN STATEMENTS OF HAROLD DAVIS; AND REQUEST FOR AN ORDER OF PROTECTION."
MOTION FOR COURT TO VACATE ITS PREVIOUS ORDER

Comes now your Petitioner, and moves this Court to vacate its Order allowing pre-testimony production of statements of Harold Davis, and files this written response to the "Motion of the State of Tennessee for an Order Directing the Defendant to Produce all Unedited Video Tapes, Audio Tapes, Written Statements of Harold Davis; Request for an Order of Protection."

1. On the morning of Monday, April 9, 2001, counsel was handed a copy of the State's Motion requesting pretrial production of "Jencks" material with respect to Harold Davis in open court when counsel appeared for the sole purpose of establishing a schedule for the hearing. This Honorable Court asked the Petitioner to respond immediately to the Motion to which counsel objected on the grounds that this Court does not have jurisdiction, and furthermore responding that counsel should be afforded an opportunity to review the Motion, conduct appropriate research, and file a thoughtful response. This Honorable Court, rejected counsel's request, and provided counsel a mere 20 minutes to review the State's Motion and orally respond.

2. After having a brief opportunity to read the Motion, but no opportunity to conduct any research, counsel argued to the Court that essentially the State is requesting production of statements of Mr. Harold Davis, a potential witness 48 hours prior to Mr. Davis' testimony which to Petitioner's counsel's knowledge has never been done in the Criminal Courts of Shelby County and which is in derogation of T.R.Cr.P. 26.2.

3. At the hearing counsel argued that T.R.Cr.P. 26.2 does not entitle the State to

review statements of witnesses until after such time as such witnesses have testified.

4. This Honorable Court, ordered that such material would be produced 24 hours prior to the testimony of Mr. Davis, notwithstanding the language of Rule 26.2 of the Tennessee Rules of Criminal Procedure.

5. Now that counsel has had an opportunity to return to his office, and review the case law, the case law clearly holds that the Court cannot require either party to produce witness statements until after witness has testified. (See, e.g. State v. Taylor, 771 S.W. 2d 387 (Tenn. 1989).

Wherefore premises considered, counsel prays that the Court vacate its previous Order, and that the Motion of the State for pretrial productions of witness statements of Harold Davis be denied.

Respectfully Submitted,

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By: Robert L. Hutton
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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing to John Campbell,
201 Poplar Avenue, Memphis, Tennessee, 38103 this 11 day of April, 2001.

Robert L. Hutton