

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED

IN RE: AMENDMENT TO RULE 12, RULES OF THE SUPREME COURT OF
TENNESSEE

October 28, 1996

ORDER

Rule 12 of the Rules of the Supreme Court of Tennessee is hereby amended by deleting the Rule in its entirety and substituting in its place the following:

Coil W. Gowan is
Appellate Court Clerk

**RULE 12. FIRST DEGREE MURDER TRIAL REPORTS AND
APPEALS IN CAPITAL CASES.**

1. Trial Judge's Report in First-Degree Murder Cases.

The report, a copy of which is appended to this rule, shall be completed in its entirety in all cases in which the defendant is convicted of first-degree murder. In the event more than one defendant is convicted of first-degree murder, a separate report shall be completed for each defendant.

Prior to the hearing on the motion for new trial, the defendant's counsel shall complete Section B of the report ("Data Concerning Defendant") and the district attorney general shall complete Section C ("Data Concerning the Victim, Co-Defendants, and Accomplices"). Counsel shall submit the completed sections to the trial judge at or before the hearing on the motion for new trial. The trial court shall complete all remaining parts of the report and shall submit the report to counsel for the defendant and the district attorney general for such comments as each may desire to make concerning the accuracy of the report. Such comments must be noted and delivered to the trial court no later than ten (10) days after the hearing on the motion for new trial. Such comments shall be attached to and made a part of the report.

It shall be the responsibility of the trial court to compile, or cause to be compiled, all information required by this rule; to certify the accuracy of the report as to those matters within the trial court's knowledge; and to transmit the report forthwith to the Clerk of the Supreme Court, Nashville, along with a certified copy of the order disposing of the motion for new trial. This report and the order shall be transmitted to the Clerk of the Supreme Court within fifteen (15) days after the trial court rules on the motion for new trial. A duplicate copy of the report and any comments of counsel attached thereto shall be filed with the record on appeal.

2. Appeal of Capital Case upon Affirmance by Court of Criminal Appeals

In accord with Tenn. Code Ann. § 39-13-206(a)(1), upon affirmance by the Court of Criminal Appeals of the conviction and sentence of death, the Appellate Court Clerk shall forthwith transmit the record to the Supreme Court for immediate docketing. The Clerk shall promptly notify the parties of the docketing, the date of filing of the record in this Court, and of the times for filing and service of briefs under T.R.A.P. 29(a). The case shall proceed in accordance with the Tennessee Rules of Appellate Procedure.

Prior to the setting of oral argument, the Court shall review the record and briefs and consider all errors assigned. The Court may enter an order designating those issues it will review. Selection of such issues will be based on the criteria of T.R.A.P. 11(a). The order shall afford the parties additional time for the filing of any supplemental briefs addressing these issues. In all cases, the Court will conduct the review as mandated by Tenn. Code Ann. § 39-13-206(c)(1).

It is so ORDERED this the 28th day of October, 1996.

FOR THE COURT:

ADOLPHO A. BIRCH, JR.
Chief Justice

REPORT OF TRIAL JUDGE IN FIRST-DEGREE MURDER CASES¹

IN THE _____ COURT OF _____ COUNTY

STATE OF TENNESSEE

Case No. _____

v.

(Defendant)

Sentence of Death ()
or
Life Without Parole ()
or
Life Imprisonment ()

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

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

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

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

4. Separate Offenses:

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

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

5. Did you as "thirteenth juror" find that the defendant was guilty beyond a reasonable doubt?

Yes () No ()

6. Did the defendant waive jury determination of punishment?

Yes () No ()

¹ A separate report must be submitted for each defendant convicted under T.C.A. §39-13-202, irrespective of the sentence received.

7. a. Did the State file a notice of intent to seek the death penalty? Yes () No ()
 b. Did the State file a notice of intent to seek life imprisonment without parole?
 Yes () No ()
 c. Did the State withdraw its notice of intent to seek the death penalty either formally or
 informally? Yes () No ()
 d. What sentence was imposed? Death () Life Without Parole () Life Imprisonment ()
 e. If life imprisonment, was it imposed as a result of a hung jury?
 Yes () No ()

8. Aggravating Circumstances, T.C.A. § 39-13-204(i):

- a. Were statutory aggravating circumstances found? Yes () No ()
 b. Which of the following statutory aggravating circumstances were instructed and which
 were found? (Note: Please note the version of the statutory aggravating circumstance
 instructed in the blanks provided when applicable, i.e., the 1989 version or the 1995
 version)

	<u>Instructed</u>	<u>Found</u>
(1) Age of the victim	()	()
(2) _____ Prior convictions	()	()
(3) _____ Risk of death to others	()	()
(4) _____ Murder for remuneration	()	()
(5) _____ Heinous, atrocious, or cruel	()	()
(6) _____ To avoid arrest or prosecution	()	()
(7) _____ Committed in conjunction with another felony	()	()
(8) _____ Committed while in custody	()	()
(9) _____ Victim was member of law enforcement, etc.	()	()
(10) _____ Victim was a judge, district attorney, etc.	()	()
(11) _____ Victim was elected official, etc.	()	()
(12) _____ Mass murder	()	()
(13) _____ Mutilation of the body	()	()

(14) Other²

Relate any significant aspects of the aggravating circumstance(s) that influence the punishment. _____

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

9. Mitigating Circumstances, T.C.A. § 39-13-204(j):

a. Were mitigating circumstances raised by the evidence? Yes () No ()

b. If so, what mitigating circumstances were raised by the evidence?

	<u>Yes</u>	<u>No</u>
(1) No significant prior criminal history	()	()
(2) Extreme mental or emotional disturbance	()	()
(3) Participation or consent by victim	()	()
(4) Belief that conduct justified	()	()
(5) Minor accomplice	()	()
(6) Extreme duress or substantial domination	()	()
(7) Youth/advanced age of defendant	()	()
(8) Mental disease or defect or intoxication	()	()
(9) Other (explain): ³ _____	()	()

² In this space, the trial court should list by statutory designation any aggravating factor that was instructed, but is not in the prior list as this aggravating factor was added to the statute by the legislature after this form was created.

³ In the space provided, please list all nonstatutory mitigating factors raised by the evidence.

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

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

If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted: _____

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

11. Was there evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs or alcohol which actually contributed to the offense?

Yes () No ()

If yes, explain: _____

12. General comments of the trial judge concerning the sentence imposed in this case (e.g., whether this sentence is consistent with those imposed in similar cases the judge has tried, etc.):

13. Brief impression of the trial judge as to conduct and/or affect of defendant at trial and sentencing: _____

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

Yes () No ()

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

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

15. Was the defendant a resident of the community where the homicide occurred?

Yes () No ()

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

17. Other significant data about the defendant:

C. DATA CONCERNING VICTIM, CO-DEFENDANTS, AND ACCOMPLICES

1. Age of victim _____
2. Race of victim _____
3. Sex of victim _____
4. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.):

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

6. Was the victim held hostage during the crime?

- ____ Yes - Less than one (1) hour
____ Yes - More than one (1) hour
____ No

If yes, give details:

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

b. If the victim was tortured, state the nature of the torture:

8. Co-Defendants:

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

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

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

d. Any further comments concerning co-defendants:

9. Other Accomplices:

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

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

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

Yes () No ()

D. REPRESENTATION OF DEFENDANT

1. How many attorneys represented defendant? _____
[If more than one counsel served, answer the following questions as to each counsel and attach a copy for each to this report.]
2. Name of counsel: _____
3. Date counsel secured: _____
4. How was counsel secured: A. Retained by defendant ()
 B. Appointed by court ()
 C. Public defender ()
5. If counsel was appointed by court, was it because:
 A. Defendant was unable to afford counsel? ()
 B. Defendant refused to secure counsel? ()
 C. Other (explain) _____
6. How many years has counsel practiced law? A. 0 to 5 ()
 B. 5 to 10 ()
 C. over 10 ()
7. What is the nature of counsel's practice? A. Mostly civil ()
 B. General ()
 C. Mostly criminal ()
8. Did counsel serve throughout the trial? Yes () No ()
9. If not, explain in detail. _____

10. Other significant data about defense representation. _____

E. GENERAL CONSIDERATIONS

1. What percentage of the population of the county where the trial was held is the same race as the defendant?
 - a. Under 10% ()
 - b. 10% to 25% ()
 - c. 25% to 50% ()
 - d. 50% to 75% ()
 - e. 75% to 90% ()
 - f. Over 90% ()
2. Were members of defendant's race represented on the jury?
 Yes () No ()
 How many of defendant's race were jurors? _____

- 3 a. Was a change of venue requested? Yes () No ()
 b. If yes, was it granted? Yes () No ()

Reasons for change if granted:

F. CHRONOLOGY OF CASE

Elapsed Days

1. Date of offense _____
2. Date of arrest _____
3. Date trial began _____
4. Date sentence imposed _____
5. Date post-trial motions ruled on _____
6. Date trial judge's report completed _____
- *7. Date received by Supreme Court _____
- *8. Date sentence review completed _____
- *9. Total elapsed days _____
10. Other _____

*To be completed by Supreme Court.

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

	<u>D.A.</u>	<u>Defense Counsel</u>
1. Comments are attached	()	()
2. Had no comments	()	()
3. Has not responded	()	()

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

_____ Date	_____ Judge, Court of _____ County _____ Judicial District _____
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