

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION 5A

STATE OF TENNESSEE,)
)
 Plaintiff,)
)
vs.) CASE NO. 2011-A-779
)
TIMOTHY GUILFOY,)
)
 Defendant.)

TRANSCRIPT OF THE PROCEEDINGS

PETITION FOR WRIT OF ERROR CORAM NOBIS

March 22, 2017

BEFORE: Honorable Monte D. Watkins
 Presiding Judge

APPEARANCES:

FOR THE PLAINTIFF
Mr. Roger Moore
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Nashville, TN 37201

FOR THE DEFENDANT
Mr. Samuel J. Muldavin, Esquire
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1 THE COURT: Mr. Guilfoy.

2 ARGUMENT BY GENERAL MOORE

3 GENERAL MOORE: Yes, Your Honor,
4 please the Court, I suspect this is here on,
5 initially, the State's Motion to Dismiss the Petition
6 For Writ of Error Coram Nobis filed by Counsel, that I
7 don't know if Your Honor's had a chance to review all
8 of the pleadings or not, but.

9 THE COURT: I have. I haven't
10 reviewed them this morning, but I'm familiar with the
11 pleadings in this matter.

12 GENERAL MOORE: Okay. And would
13 hope that we probably don't have, or stand to be
14 corrected, a lot of dispute about the procedural
15 aspects of what has occurred in the case. I think
16 those are set out in both parties' motions and
17 responses.

18 The bottom line being that I did
19 receive Counsel's response to the State's Motion To
20 Dismiss, and one of those had good intentions of
21 filing a written response but time got away, but don't
22 think that, in the scheme of things, it changes the
23 bottom line of what the State's argument is in this
24 matter. But I would have given Counsel, and I'll give
25 it to him now, nothing that's new, but it's an opinion

1 that came out February the 13th of 2017.

2 Give one to the Court.

3 THE COURT: Which case is that?

4 GENERAL MOORE: It's Tornita

5 Crenshaw versus State. It's, the CCA number is

6 M2016-01045-CCA-R3-ECN, case out of Judge Dozier's

7 court on a Petition for Writ of Error Coram Nobis.

8 And the case itself really is not noteworthy, other

9 than as recently as a month ago, the Court of Criminal

10 Appeals is reiterating the black letter law of the

11 Writ of Error Coram Nobis and procedures, and the law

12 that, under 40-26-105, which provides for the writ,

13 that, and according to the opinion on Page 4, it is

14 well established that the writ of error coram nobis

15 "is an extraordinary procedural remedy that fills only

16 a slight gap into which few cases fall."

17 And the decision whether to grant

18 or, by that matter, to have a hearing in this case,

19 the court went through the same procedure that the

20 State's asking the Court to do here today, which is to

21 look at when this matter became final. It became

22 final, obviously, for the Writ of Error Coram Nobis

23 after the motion for new trial. It does not depend

24 upon appeals or any other type of litigation. And, in

25 this matter, the judgment, I would submit, became

1 final in the trial court, in this court, on April
2 13th, 2012. The instant petition for Writ of Error
3 Coram Nobis was filed on January 7th, 2017, almost
4 five years following the expiration of the statute of
5 limitations.

6 So, we look to or the Court looks
7 to, I submit, is there an excuse for tolling under the
8 State v. Workman and all the cases that have come
9 along since that, that would toll the time limit for
10 allowing the writ to proceed. And I would submit in
11 this case, there is nothing new. And that's the
12 bottom line. The argument in this case has to do with
13 an issue, I would submit, that was litigated many
14 times before this Court and particularly at the
15 hearing on the Petition For Post Conviction Relief.
16 The issue centered around - don't know whether the
17 Court recalls.

18 THE COURT: I do. Go ahead,
19 though.

20 GENERAL MOORE: Whether Mr. McElvoy
21 was ineffective for having not objected to the
22 introduction of the forensic interview as an exhibit.
23 And that it is probably in the record that, at some
24 point, the jury asked to have recording equipment to
25 see the video or to do whatever they may have done.

1 could testify whether they watched it or not might be
2 arguable.

3 THE COURT: Well. Some case law
4 says that they could say yes, we watched it, but they
5 can't say what influence it had upon them.

6 GENERAL MOORE: Exactly. Exactly.
7 And that is where it would stop. They could not say
8 oh, and after watching it, we discussed this or didn't
9 influence at all or we just wanted to watch it out of
10 curiosity or whatever. Yes, Your Honor, is totally
11 correct. You can't go there.

12 So the Writ of Error Coram Nobis is
13 not a proper venue. In fact, there is no proper venue
14 at this point to get to that, asking a juror what
15 influence a particular piece of evidence had on them.
16 Whether that was properly admitted or not was an issue
17 that has been litigated and, obviously, Mr. Guilfooy
18 still stands convicted of this, so he has lost on that
19 matter in the Court of Criminal Appeals; and this is
20 another attempt to have either a second or third bite
21 at that apple, which with regard to this issue, I
22 submit, has been pretty well gnawed down to the core
23 and that there's nothing left to chew on here.
24 That's the State's position in the matter. I know the
25 Court, to its credit and its said many times, where a

1 hearing, where a person is entitled to a hearing, the
2 court's going to give a hearing, let a person have a
3 hearing. But there are some instances where the law
4 doesn't require or allow that, and I would submit this
5 is one of those instances that Mr. Guilfooy has no
6 remedy procedurally, number one, to toll the statute
7 of limitations, which has run and should be applied in
8 this case. There is nothing newly discovered other
9 than, I would submit, an attempt to try to discover
10 something through a process that cannot be allowed,
11 that is: breaching the sanctity of the jury room to
12 determine whether or not a piece of evidence that was
13 not extraneous, it was in the record, was viewed and
14 or considered by them.

15 So, with that, the State's position
16 in this matter is I believe set out in our motion and
17 we would stand on that subject to perhaps a brief
18 rebuttal.

19 THE COURT: All right.

20 Mr. Muldavin.

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1 ARGUMENT BY MR. MULDAVIN

2 MR. MULDAVIN: May it please the
3 Court, before anything else, I would like to address
4 the case of Crenshaw versus State of Tennessee that
5 has just been handed to me by General Moore. And I am
6 looking at, these pages are not numbered, but it would
7 be Page 1, 2, 3 - oh, they are.

8 THE COURT: They are numbered.

9 MR. MULDAVIN: Some of them are
10 anyway. Page 5 in the middle of the page where it
11 says: Petitioner identifies nothing in the record
12 that was not known to her at the time of the trial.

13 THE COURT: Wait a minute, wait a
14 minute. What part of Page 5?

15 MR. MULDAVIN: I'm sorry. It would
16 be about a little more than halfway down. This would
17 be the paragraph beginning with "None of the
18 petitioner's".

19 THE COURT: Okay. All right.

20 MR. MULDAVIN: Again, I quote:
21 "The petitioner identifies nothing in the record that
22 was not known to her at the time of the trial or
23 shortly thereafter. All of the petitioner's
24 allegations could have been litigated at the trial of
25 this matter or in a petition in a post conviction

1 proceeding."

2 Unfortunately, in this case, the
3 record reflects, and I'm referring specifically to the
4 post conviction hearing in this case, the issue of the
5 videos could not have been litigated because when
6 defense counsel attempted to raise the issue, he was
7 knocked down by Rule 606(b) and at least a part of it
8 cited by General Moore that says: Upon an inquiry into
9 the validity of a verdict or indictment, a juror may
10 not testify as to any matter or statement occurring
11 during the course of the jury's deliberations or to
12 the effect of anything upon any juror's mind or
13 emotions as influencing that juror to assent or
14 dissent from the verdict or the indictment or
15 concerning the juror's mental processes." Which I
16 suggest there is absolutely no disagreement among any
17 of us as to the meaning of that portion of the
18 statute. But, at the same time --

19 THE COURT: Well. Rule actually.

20 MR. MULDAVIN: Excuse me. Of that
21 rule. Tennessee Rules of Evidence, Rule 606.

22 At the same time, when Your Honor
23 noticed that there are cases out there in which
24 certain kinds of questions can be asked of jurors, we
25 move on to the second part of Rule 606(b), which

1 begins: "except that a juror may testify on the
2 question of whether extraneous prejudicial information
3 was improperly brought to the jury's attention or
4 whether any outside influence was improperly brought
5 to bear upon any juror, or whether the jurors agreed
6 in advance to be bound by a quotient or gambling
7 verdict without further discussion; nor may a juror's
8 affidavit or evidence of any statement by the juror
9 concerning a matter about which the juror would be
10 precluded from testifying be received for these
11 purposes."

12 The statute is abundantly clear.

13 THE COURT: Again, it's a rule.
14 Rule 606, the Rules of Evidence.

15 MR. MULDAVIN: I'm sorry, Your
16 Honor. You are correct. I have statutes on my mind.

17 Again, the rule is abundantly
18 correct. I mean it's abundantly clear. That when the
19 juror foreperson was presented at the post conviction
20 hearing and was presented for the purposes of being
21 asked two questions, were you a member of the jury,
22 and did you watch the video, and nothing more, that
23 that testimony should have been admitted into
24 evidence. Had she been asked what did you think of
25 the videos, how did they affect your verdict, did they

1 sway you in any manner, that testimony would
2 absolutely clearly, and I believe we all agree, been
3 absolutely improper and inadmissible.

4 So when General Moore says, or
5 excuse me, when the case that he cited, the Crenshaw
6 case, talks about that particular litigant's
7 allegations having being able to have been litigated
8 at trial, that case is absolutely distinguishable from
9 this one. Because in this particular case, such
10 allegations were attempted to be litigated at trial
11 and were not permitted and defendant was not permitted
12 to do so.

13 As General Moore has noted, we are
14 aware of all the proceedings that went forth in this
15 case. It was after the trial and after the verdict
16 that the defendant first learned that a juror, that
17 the jury had watched the verdict.

18 THE COURT: The video.

19 MR. MULDAVIN: I mean had watched
20 the videos. And, as I noted, quite frankly, in my
21 response, it was discovered before the statute of
22 limitations for error coram nobis would have expired.
23 Nevertheless, at every turn in every proceeding, he
24 attempted through his lawyers to bring the issue of
25 viewing of the videos before the court. He did so in

1 the motion for new trial. He did so in the motion, in
2 the petition for post conviction. He did so in his
3 appeal of right regarding his conviction. He did so
4 in his appeal of the denial of his petition for post
5 conviction relief. In each case, the trier, the
6 courts basically would not hear him. Most
7 interestingly, in his appeal of right, the court would
8 not consider it, because as far as the court was
9 concerned, the issue of the jurors having watched the
10 videos did not exist. And it did not exist because,
11 actually, we were relying in part on General Moore's
12 closing argument when he explained that there was no
13 technical basis for showing the videos in the
14 courtroom, but that the equipment was available to
15 show it in the jury room. The court cited him and
16 says if the jurors had watched these videos in the
17 jury room, there would've been a record of the request
18 for the equipment and there would've been a record of
19 the equipment having been delivered to the jurors.
20 Since there is no such record, we cannot say that the
21 jurors watched the videos and, therefore, there was
22 nothing to decide as it pertains to whether or not
23 they were exposed to extraneous evidence.

24 In his motion to dismiss, General
25 Moore cites what I call Guilfoxy 2, which is the

1 opinion of the Court of Criminal Appeals affirming
2 Your Honor's denial of post conviction relief. The
3 only mention of the videos in that particular case is
4 essentially a reaffirmation or a reiteration, perhaps
5 more appropriately, of that court's finding in Guilfoxy
6 1, that the record was, that there was no record of
7 the jurors ever having requested and, therefore, no
8 record of the jurors ever having received the video
9 equipment in order to watch those videos.

10 The whole issue of error coram
11 nobis -- Well. Let me just throw out one more fact,
12 which is that while defendant discovered before the
13 running of the statute of limitations, that the jurors
14 had watched the videos, it was after the statute of
15 limitations had run. In fact, it was around September
16 of 2016 that we learned for the first time how it came
17 to pass that the jurors watched the videos. And the
18 way they watched those videos was when the jury
19 foreperson, Ms. Hillary Hoffman, the woman who the
20 Defense tried to tender as a witness at the post
21 conviction hearing, asked the court officer to see the
22 videos, saying basically that she knew of their
23 existence. She felt that in order to render a fair
24 verdict, she needed access to any and all information
25 available so that she could, with a clear mind and a

1 clear conscience, render a verdict that she deemed to
2 be appropriate. What we don't know is what was done
3 with that request, other than that it was complied
4 with. We don't know what the court officer did, other
5 than bring the video equipment and the television set
6 to the jury room and to allow them, the jurors to
7 watch the videos. There is no record of that. There
8 is no record of her asking. And it has always been my
9 experience that when a jury would make a request such
10 as that, the court reporter would go to the judge, and
11 there would be a record of that, and the judge would
12 notify the lawyers, and there would be a record of
13 that; and the judge would make his decision, and there
14 would be a record of that; and then the court officer
15 would act upon the judge's decision.

16 As far as evidence is concerned
17 versus extraneous information, the Henry case makes it
18 absolutely clear that if it wasn't shown in the
19 courtroom, that evidence is that which is brought
20 before the jury for purposes of making a determination
21 regarding the issues before it from that witness stand
22 and from whatever evidence is presented to those
23 jurors in the courtroom. In the case of these videos,
24 if they weren't shown in the courtroom, they are not
25 evidence. They are extraneous information to which

1 the jury should never have been exposed.

2 In Walsh --

3 THE COURT: Well. Give a citation.

4 MR. MULDAVIN: I will.

5 How critical this is also goes to
6 the nature of the extraneous information that we're
7 talking about - in this case the videos. So when we
8 look at Walsh, Walsh versus State 166 SW 3rd, 641
9 Tennessee 2005, and specifically at Page 647; and the
10 court states: When a jury has been subjected to
11 extraneous prejudicial information, the validity of
12 the verdict is suspect. Moreover, upon the showing
13 that the jury was exposed to extraneous prejudicial
14 information, a presumption, albeit a rebuttable
15 presumption, of prejudice arises and the burden shifts
16 to the State to introduce admissible evidence to
17 explain the conduct or demonstrate that it was
18 harmless.

19 THE COURT: Well. But let me just
20 interject right here. I mean there's a lot of case
21 law that talks about extraneous information provided
22 to the jury, but those examples are often examples of
23 outside influences of, for example, court officers
24 telling the jurors what to do, things like that.

25 Now, you know, whether, I don't

1 know what Walsh says is the extraneous information,
2 but.

3 MR. MULDAVIN: Well. There also,
4 in the case of Henry, for example, the jury was
5 dealing with audio tapes, and those audio tapes, while
6 put in the jury room, were not played in the
7 courtroom. And, Judge, so I can give the Court the
8 cite, Walsh is --

9 THE COURT: Well, Walsh is 166 SW
10 3rd. You mentioned Henry, I think.

11 MR. MULDAVIN: I'm sorry. Henry,
12 excuse me, 1997 WL 283735. It's an unreported case.
13 But, in any event, in Henry, we were dealing with
14 audio tapes. The audio tapes had not been shown in
15 the jury room, excuse me, in the courtroom. The
16 jurors requested that they be permitted to hear those
17 audio tapes in the jury room. They were brought back
18 into the courtroom and the judge informed them that he
19 could not permit them to do so; and the reason he
20 could not permit them to do is because they had not
21 been played in the courtroom and, therefore, were not
22 to be considered evidence. He went on to tell the
23 jury that if those video, excuse me, those audio tapes
24 had been played in the courtroom, then they would be
25 free to listen to them to their hearts' content in the

1 jury room.

2 Interestingly, there's another case
3 which goes to, as I look at it, the sanctity of the
4 jury where an audio tape was played in the courtroom
5 and the defendant asked that the jury listen to the
6 audio tape in the jury room, and the judge said no, if
7 the jurors want to hear it, the jurors will ask for
8 it, they are the only folks who have standing to do
9 so.

10 I cannot, without regurgitating the
11 contents of my response and without reciting step by
12 step all of the procedural occurrences in this case,
13 all that I can argue to this court is that from Adams
14 to Burford to Walsh to Workman, which, unfortunately
15 had a sad result for Mr. Workman after all that
16 litigation, the law is absolutely clear. That due
17 process rules are that every person in this country
18 has a right to a fair trial and to a verdict that is
19 in no way questionable in terms of its validity, its
20 believeability; and, therefore, the due process
21 consideration comes in to be weighed against the
22 strict application of a statute of limitations.

23 The State is asking the court to
24 ignore these due process considerations and simply
25 apply the statute of limitations. In essence, the

1 State's argument is that the statute of limitations is
2 one year, the pleading was filed after one year, the
3 statute of limitations has run, end of story. It's
4 almost analogous to the State's argument regarding
5 606(b) at the post conviction hearing when the State
6 simply argued 606(b), the jurors cannot testify,
7 that's the end of it, ain't no more, and basically sat
8 down.

9 Review of this line of cases, and
10 particularly Henry and particularly Walsh, which
11 treats extraneous evidence so carefully as to
12 determine that it creates a presumption of prejudice
13 that need be answered by the State, doesn't suggest,
14 but absolutely avers and urges that due process
15 considerations govern the facts of this case and that
16 defendant's petition for error coram nobis, as a
17 matter of justice, need be heard.

18 Thank you, Your Honor.

19 THE COURT: All right. State's
20 response.

21 GENERAL MOORE: Your, Honor just
22 briefly.

23

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1 REBUTTAL ARGUMENT BY GENERAL MOORE

2 GENERAL MOORE: First of all, and
3 with all due respect to Counsel, I would submit that
4 citing unreported cases without providing court or
5 counsel a copy is contrary to the rules.

6 MR. MULDAVIN: He's right, and I
7 apologize.

8 GENERAL MOORE: But I would, sight
9 unseen, and, again, with apologies to whoever the
10 trial court judge may have been, I would submit he got
11 it wrong or she got it wrong. Because the Rules of
12 Criminal Procedure, which are and have the force and
13 effect of law because, obviously, they have to be
14 approved by the legislature, Rule 30.1 - Exhibits in
15 the Jury Room, which has been in effect since many
16 years and they actually came out of a case that I
17 tried against Karl Dean years ago in Judge Shriver's
18 court, and I've been racking my brain, but the Supreme
19 Court basically said the court had discretion to allow
20 juries to review evidence or whatever. But Rule 30.1:
21 unless for good cause shown, the court determines
22 otherwise, the jury shall take to the jury room -
23 shall, not may - shall take to the jury room for
24 examination during deliberations all exhibits and
25 writings, except depositions, that have been received

1 in evidence.

2 There is absolutely nothing in that
3 rule, and with all due respect to, like I said, the
4 trial court in Henry, nothing that says exhibits that
5 have been given to the jury or played in court or
6 anything like that. That sort of defeats the whole
7 purpose of the rule. And Your Honor has dealt with
8 that and applied Rule 30.1 since you've been on the
9 bench, as far as I can recall, which is that's the
10 law. And this was not an extraneous item. It wasn't
11 someone getting a laptop and googling Timothy Guilfoy
12 or whatever else. It was not extraneous. That's one
13 of the key points, I would submit on behalf of the
14 State. This was an exhibit. And its been litigated
15 about, ever since, and Counsel acknowledges that
16 counsel Mr. McElvoy, at trial, certainly knew it was
17 introduced. Post conviction counsel raised it and
18 argued it, and this is not, I don't think you can
19 stretch this into an ineffective assistance of post
20 conviction counsel and reopen, that's not what coram
21 nobis is about in the first place. And, no, it
22 doesn't necessarily stop with the statue of
23 limitations because if that was the case, the State
24 would've just said one sentence - the statute's run,
25 don't look at it.

1 We do, the court does have to look
2 at whether there are exceptions, whether the Workman,
3 and some of us have different opinions about how that
4 turned out. But, in any event, the Burford/Workman is
5 a high bar that this defendant has not and cannot
6 overcome for any number of reasons. And I would
7 submit if you sort of take it down the logical path
8 that Counsel wants, which is to have the evidence and
9 have a hearing in this matter, the court still doesn't
10 get there because, one, this was not extraneous, it
11 was an exhibit, and you would have to go behind well,
12 did that piece of evidence sway the jury in their
13 determinations. You can't go there. So we would
14 never ever, even if the Court were to have a hearing
15 on this, get to where Counsel wants to be, which is to
16 say the jury based its verdict on a piece of evidence
17 that they shouldn't have seen. That's already been
18 litigated. And I would submit, with all due respect,
19 we have to look at the definition of is under coram
20 nobis the newly discovered evidence, which we don't
21 have here, there's absolutely nothing newly
22 discovered, may have resulted in a different judgment
23 had it been presented at trial. This is sort of the
24 reverse. There's evidence that was presented at
25 trial. Had it not been, might there have been a

1 different verdict. That's what we went through with
2 post conviction and that's been settled and resolved
3 contrary, I submit, to Mr. Guilfooy's position. It's a
4 matter the court cannot inquire into beyond what the
5 rules allow and there is no point in an exercise in
6 futility. And I think that ties in with the should
7 there be an exception to the late filing of the
8 petition? No. Because if you look at it, there is
9 nothing that would change the outcome based upon
10 relitigating a piece of evidence that was introduced.
11 Not extraneous but introduced.

12 Thank you, Your Honor.

13 MR. MULDAVIN: May I make one quick
14 response, Judge.

15 THE COURT: Well. You know, they
16 get the last word.

17 MR. MULDAVIN: I know.

18 THE COURT: But go ahead. Go
19 ahead.

20 MR. MULDAVIN: If you don't ask,
21 you don't get.

22 Very, very briefly.

23 When Counsel says that trial
24 counsel knew about these videos and that they were
25 being watched at the post conviction, what he's

1 relying upon is the testimony of Ms. Katie Byers, the
2 defendant's sister, when she testified as follows:
3 (Reading from transcript) You heard me. You've
4 been in the courtroom? Yes. You heard me ask Mr.
5 McElvoy whether he remembered telling you during the
6 jury deliberations they were watching videos? Yes.
7 Do you remember him making that statement? If so,
8 describe the context. I do. Right after the jury
9 went into deliberations, it was lunchtime, so we went
10 out into the hallway and Bernie walked by. I asked
11 him if we had time to go over to Jersey Mike's for
12 lunch, and he said yes, and he did tell me at that
13 time the jurors asked the bailiff for a TV and viewing
14 equipment. Mr. Martin: All right. Thank you.
15 That's all I have.

16 On the witness stand, when
17 questioned by Mr. Martin, Mr. McElvoy testified, and
18 this is Page 31. What I just read was at Page 50.
19 Page 31. (Reading) Do you remember telling Mr.
20 Guilfooy's sister that, at some point during the jury
21 deliberations, that the jury was watching the videos?
22 Answer: I don't.

23 What Counsel was relying upon is
24 hearsay predicated upon, upon further testimony by
25 somebody who has no recollection of that testimony and

1 in the absence of any information with regard to the
2 accuracy of that testimony. Because how do we know
3 that he knew? So it's the equivalent of the absence
4 of a record to prove anything, just as the Court of
5 Criminal Appeals treated the absence of a record with
6 regard to the jurors actually watching the videos.

7 The last thing I want to say is in
8 response to General Moore's recital of Rules of
9 Criminal Procedure 31, and I am quoting --

10 THE COURT: I think it's 30.1.

11 MR. MULDAVIN: .1. And I am again
12 referring to State versus Henry, and I quote: "It is
13 immaterial whether the tapes themselves were entered
14 into evidence or were made exhibits for the purpose of
15 identification only. Evidence is any species of proof
16 or probative matter legally presented at the trial of
17 an issue by the act of the parties for the purpose of
18 inducing belief in the minds of the court or the jury
19 as to their contention." And it is citing the Fifth
20 Edition of Black's Law Dictionary, which I have to
21 think has not changed all that much since the time of
22 this case.

23 In essence, what this court is
24 saying is that it doesn't matter what you call it. It
25 doesn't matter if you call it evidence. It doesn't

1 matter if you call it exhibits. Whether it is, in
2 this particular case, whether these videos were to be
3 viewable by this jury is contingent upon whether the
4 procedures by which they would have properly been made
5 evidence, i.e., the showing of these videos in the
6 courtroom, is what would have made the difference and
7 made it permissible for them to be seen in the jury
8 room.

9 Thank you, Your Honor.

10 THE COURT: All right.

11 GENERAL MOORE: Rearguing and
12 relitigating is not a substitute for newly discovered
13 evidence.

14 THE COURT: All right. Thank you
15 both.

16 MR. MULDAVIN: No response, Judge.

17 THE COURT: I know. They get the
18 last word. All right.

19 GENERAL MOORE: Although that could
20 count.

21 THE COURT: Of course, I'm going to
22 take a look at all of this and issue a ruling on it
23 two, three weeks down the road; so you will hear from
24 me. All right?

25 GENERAL MOORE: Judge, can I just

1 ask Counsel for the record if he could provide the
2 Court and Counsel with a copy of the Henry case?

3 THE COURT: Yes. Right.

4 MR. MULDAVIN: Actually, I have
5 one that my client brought, but he did some
6 highlighting.

7 GENERAL MOORE: Well. That's fine.
8 We'll find it.

9 THE COURT: Okay. Well. He cited
10 it as 1997 Westlaw 283735, so.

11 GENERAL MOORE: I don't do WestLaw,
12 so.

13 MR. MULDAVIN: I have a Lexis cite,
14 if that's easier.

15 END OF PROCEEDINGS

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COURT REPORTER'S CERTIFICATE

I, Patsy Norman, Primary Designated
Reporter, in and for the State of Tennessee,

DO HEREBY CERTIFY that the foregoing
proceedings were taken at the time and place set forth
in the caption thereof; that the proceedings were
stenographically reported by me in shorthand; and that
the foregoing twenty-six (26) pages constitute a true
and correct transcription of said proceedings to the
best of my ability.

I FURTHER CERTIFY that I am not a relative or
employee or attorney or counsel of any of the parties
hereto; nor a relative or employee of such attorney or
counsel; nor do I have any interest in the outcome or
events of this action.

IN WITNESS WHEREOF, I have hereunto affixed
my official signature this 24th day of August, 2017,
at Nashville, Davidson County, Tennessee.

Patsy Norman
Primary Designated Reporter
State of Tennessee
Commission Expires: 06/30/2018