

8-18-10

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION V

STATE OF TENNESSEE,)
)
 Plaintiff,)
)
 v.)
)
 TIMOTHY P. GUILFOY,)
)
 Defendant.)

Case No.: 2009-B-2073

FILED
2010 JUL 30 PM 4:27
DAVID C. TOWNSEND CLERK
DC

MOTION TO COMPEL

Comes now the Defendant, by and through the undersigned attorney, and pursuant to Rule 16, Tennessee Rules of Criminal Procedure, respectfully requests that this Honorable Court direct the State of Tennessee to provide the information described below to the Defendant prior to trial.

In support of this motion, the Defendant asserts as follows:

1. In this case, the alleged victims are A [REDACTED] T [REDACTED] and J [REDACTED] A [REDACTED]
2. On March 23, 2009, the three alleged victims were interviewed at the Montgomery County Child Advocacy Center in Clarksville, Tennessee. These interviews were recorded. Each interview is approximately one hour.
3. In the trial of this case, the Defendant expects that the State of Tennessee will call the three alleged victims to testify in its case-in-chief. The credibility of each of the three alleged victims will be at issue.

4. For this reason, the Defendant seeks to obtain possession of the recordings of their prior statements and to have those statements transcribed so that they may be used to impeach the alleged victims.

5. Further, the Defendant also seeks to provide copies of the recordings of these interviews to an expert in the field of child development and with particular expertise in the proper interviewing of children in cases of possible child sexual abuse. The Defendant wishes to have the interviews reviewed by such expert. The Defendant will provide the name, address, telephone number and curriculum vitae of such expert under seal.

6. Rule 16, Tennessee Rules of Criminal Procedure, provides in pertinent part as follows:

(a) Disclosure of Evidence by the State

(1) Information Subject to Disclosure.

(F) Documents and Objects. Upon a defendant's request, the state shall permit the defendant to inspect and copy of photograph books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, if the item is within the state's possession, custody, or control and:

- (i) the item is material to preparing the defense;
- (ii) the government intends to use the item in its case-in-chief at trial; or
- (iii) the item was obtained from or belongs to the defendant.

The Defendant submits that these recordings are material to preparing a defense.

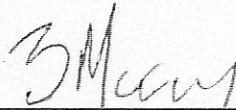
7. In State of Tennessee v. Mark A. Schiefelbein, 230 S.W.3d 88 (Tenn. Crim. App. 2007) the defendant was a gymnastics teacher. He was charged with multiple counts of aggravated sexual battery toward female students. Police seized approximately 25 videotapes from his home. In general, the videotapes were shot by the defendant and showed the alleged victims performing gymnastics. The State of Tennessee suggested that the videotapes focused unnecessarily on the genital regions of the alleged victims. The Defendant requested discovery of the videotapes. The State of Tennessee did not provide copies of these materials, but instead put the following restrictions on discovery: it allowed the defendant and defense counsel to view the videotapes at the local police department, at a time convenient with the police department. The State justified its restrictions on discovery by arguing that the materials requested were pornographic, and that dissemination of these materials would "revictimize" the alleged victims. The trial court approved these restrictions.

The Court of Criminal Appeals found that these limitations were unjustified and violated Rule 16.

The language of Rule 16(a)(1)(F) is straightforward, and the State's duty is mandatory. Upon request, "the state *shall permit*" inspection and copying.

For the foregoing reasons, the Defendant respectfully requests that this honorable court grant this motion to compel and direct the court to provide the information described here in.

Respectfully submitted,



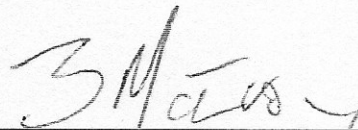
BERNARD F. McEVOY, #014405
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Nashville, Tennessee 37219
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been mailed to the following person:

Sharon Reddick
Assistant District Attorney General
222 Second Avenue North, Fifth Floor
Nashville, Tennessee 37201

on this the 29 day of July, 2010.



Bernard F. McEvoy