**Ex. 13**

\*\*\*\*\*\*\*\*\*TO BE FILED UNDER SEAL\*\*\*\*\*\*\*\*\*

IN THE CIRCUIT COURT OF COUNTY, ALABAMA

------- JUDICIAL CIRCUIT CRIMINAL DIVISION

STATE OF ALABAMA, )

)

Plaintiff, )

)

v. ) CC06--

)

XXXXX, )

)

Defendant. )

EX PARTE PLEADING – TO BE PLACED UNDER SEAL

EX PARTE PLEADING – TO BE FILED UNDER SEAL

PURSUANT TO THE ORDER OF THIS COURT, THIS DOCUMENT REMAINS PRIVILEGED AND CONFIDENTIAL AND MUST NOT BE DISCLOSED OR INSPECTED BY ANYONE IN ACCORD WITH THE ATTORNEY-CLIENT PRIVILEGE, AKE V. OKLAHOMA, 470 U.S. 68, 83 (1985); UNITED STATES V. NOBLES, 422 U.S. 225 (1975), AMENDMENTS FIVE, SIX, EIGHT AND FOURTEEN OF THE CONSTITUTION OF THE UNITED STATES.

# EX PARTE MOTION G

**IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA TWENTY-THIRD JUDICIAL CIRCUIT**

**CRIMINAL DIVISION**

**STATE OF ALABAMA, )**

**)**

**PLAINTIFF, )**

**)**

1. **) CC06-**

**)**

**XXXX, )**

**)**

**DEFENDANT. )**

**EX PARTE MOTION FOR FUNDS FOR FORENSIC AUDIO TAPE ANALYSIS**

COMES NOW Defendant XXXX, by and through his attorneys, and hereby petitions this Honorable Court for funds sufficient to allow him to retain forensic audio tape expert James A. Griffin to analyze the 911 recording in the preparation of his capital trial and, as grounds thereof, states the following:

* 1. XXXX is an indigent Defendant charged by complaint with Capital Murder, to wit: 13A-5-40(a)(5). Upon information and belief, the State will seek the death penalty.
  2. The State alleges that on 2005, Mr. XXXX intentionally killed Officer V by shooting him multiple times with a pistol while both were in the parking lot of a restaurant called ---- located on----Lane in , Alabama.
  3. The Defendant, XXXX, is currently incarcerated in the ---

County Jail in , Alabama, and is indigent and without funds to hire experts that are

critically necessary to his constitutional right to a fair trial and the effective assistance of

counsel pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

* 1. The Defendant respectfully submits that *Ake v. Oklahoma*, 470 U.S. 68 (1985), and its progeny hold that where critically necessary, the denial of necessary expenses deprives the Defendant of the effective assistance of counsel and other constitutional guarantees of a fair trial under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.
  2. Among the items of evidence received by the Defendant is a recording of a 911 call made by the wife of the Defendant, --. The available evidence indicates

that she was inside the restaurant speaking with a 911 operator when gunshots were fired outside of the building. These gunshots can be heard clearly on the recording.

* 1. It is also clear from the evidence at the scene that Officer V fired 6 shots from his 9mm pistol. These gunshots apparently left bullet holes in both the building and in the car near the area where witnesses claim to have seen XXXX standing. Upon information and belief, it is the defense’s contention that Off. V fired at least the first shot and perhaps more before any return fire occurred. Because the shots fired from Off. V’s pistol and the shots that killed Off. V were fired from different caliber weapons with different caliber projectiles it may be determined from the recording both the ordering and thus the responsibility for each shot fired.
  2. Establishing through scientific means that Off. V fired the first or subsequent shots would be valuable evidence in both the guilt and sentencing phases of this case. “Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth

Amendment, the Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’” Holmes v. South Carolina, --- S.Ct , 2006 WL

1131853 (2006), quoting, *California v. Trombetta,* 467 U.S. 479, 485, 104 S.Ct. 2528,

81 L.Ed.2d 413 (1984). See also, Chambers v. Mississippi, 410 U.S. 284, 294

(1973)("The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations.”)

* 1. The defense has contacted Mr. J [1](#_bookmark0), owner of Forensic Tape Services in

Jackson, MS. Mr. G is a Recorded Evidence Specialist who has been retained by and testified for both the prosecution and the defense in numerous cases. Mr. G has agreed to assist the defense in analyzing this recording in an attempt to determine which of the gunshots heard were fired by Off. V. Mr. G has indicated that such a determination can be made from the recorded evidence.

WHEREFORE, PREMISES CONSIDERED, this Honorable Court is respectfully requested to grant $3,000 for fees and expenses in order to continue to retain Mr. G to perform the analysis described which are critically necessary, without which the Defendant will be deprived of the effective assistance of counsel as well as the constitutional guarantees of a fair trial under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

RESPECTFULLY SUBMITTED,

1 See, Curriculum Vitae of James -, attached.

RICHARD S. JAFFE

J. DEREK DRENNAN

BRUCE GARDNER

OF COUNSEL:

JAFFE, STRICKLAND & DRENNAN, P.C.

The Alexander House 2320 Arlington Avenue

Birmingham, AL 35205

(205) 930-9800

BRUCE GARDNER

P.O. Box 18636

Huntsville, AL 35804-8636

(256) 533-5756

*THIS MOTION IS NOT BEING SERVED ON OPPOSING PARTY*