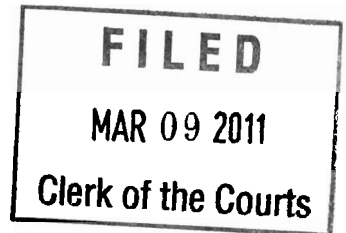


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



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

No. M2011-00527-SC-RL2, RL - Filed: March 9, 2011

ORDER

Rule 12(1), Rules of the Tennessee Supreme Court, requires trial judges to file a report in all cases in which a defendant is convicted of first-degree murder, including cases in which the defendant pleads guilty to first-degree murder and cases remanded by the appellate court for retrial and/or resentencing. The report form is appended to Rule 12.

In enacting Chapter 734, Public Acts of 2010, the General Assembly amended various provisions in the Tennessee Code Annotated to replace the term “mental retardation” with the term “intellectual disability.” In particular, the Act made that change (and related changes) in Tenn. Code Ann. § 39-13-203, governing first-degree murder cases in which the defendant was a person with intellectual disability at the time of the offense.

Consistent with Chapter 734’s amendments to Tenn. Code Ann. § 39-13-203, the Court hereby amends the Rule 12 report form, specifically item B(10), to replace the term “mental retardation” with the term “intellectual disability” and the term “was mentally retarded” with the term “had intellectual disability[.]” The amended report form is attached as an appendix to this order. This amendment shall take effect upon the filing of this order.

The Clerk shall provide a copy of this order to LexisNexis and Thomson Reuters. In addition, this order shall be posted on the Tennessee Supreme Court’s website.

IT IS SO ORDERED.

PER CURIAM

**REPORT OF TRIAL JUDGE
IN FIRST DEGREE MURDER CASES¹**

IN THE _____ COURT OF _____ COUNTY

STATE OF TENNESSEE

Case No. _____

(Defendant)

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

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. a. Status of Case: Original Trial () Retrial/Resentencing ()
 b. Brief summary of the facts of the homicide, including the means used to cause death and scene of crime: _____

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 the defendant was guilty beyond a reasonable doubt? Yes () No ()

¹A separate report must be submitted for each defendant convicted under T.C.A. § 39-13-202 irrespective of the sentence received. This includes defendants who have pleaded guilty to first-degree murder.

6. Did the defendant waive jury determination of punishment?
Yes () No ()
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. Who sentenced defendant? Judge () Jury ()
- e. What sentence was imposed? Death () Life Without Parole ()
- f. If life imprisonment, was it imposed as a result of a hung jury?
Yes () No ()
8. Was victim impact evidence introduced at trial? Yes () No ()
9. 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? (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.)

	Instructed	Found
(1) Youth 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 a 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) Elderly or particularly vulnerable victim _____	()	()

(15) 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 ()

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

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

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

	Yes	No
(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 _____	()	()

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

²In this space, the trial court should list by statutory designation any statutory aggravating factor that was instructed, but is not in the prior list.

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

(d) If tried with a jury, was the jury instructed regarding all the circumstances indicated in 10(b) as mitigating circumstances?

Yes () No ()

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

11. 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 ()

12. Was there any 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: _____

13. 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.): _____

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

B. DATA CONCERNING THE DEFENDANT⁴

Name _____ 2. Birth Date _____
Last, First Middle mo./day/year

⁴Defense counsel may omit any information that may, if disclosed, impair the interests of the client.

3. Sex _____ 4. Marital status: Never Married ()
 5. Race _____ Married ()
 6. Children: Number _____ Divorced ()
 Ages: _____ Spouse Dec'd ()
 Other dependents: _____
7. Parents: Father - Living? Yes () No ()
 Mother - Living? Yes () No ()
8. Education: Highest Grade or Level Completed: _____
9. Intelligence level: Low (IQ below 70) _____
 Med.(IQ 70 to 100) _____
 High (IQ above 100) _____
 Not known _____
10. a. Was the issue of defendant's intellectual disability under
 T.C.A. § 39-13-203 raised? Yes () No ()
 b. If so, did the court find that the defendant had intellectual disability
 as defined in T.C.A. §39-13-203(a)? Yes () No ()
11. a. Was a psychiatric or psychological evaluation performed?
 Yes () No ()
 b. If yes, summarize pertinent psychiatric or psychological information
 and/or diagnoses revealed by such evaluation: _____

12. Employment record of defendant at or near time of offense, including if
 known, type of job, pay, dates job held and reason for termination:

13. Defendant's Military History, including type of discharge:

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

- Age of victim _____ 2. Sex _____
3. Race of victim _____ 4. Marital Status: Never Married ()
5. Children: Number _____ Married ()
Ages _____ Divorced ()
Other dependents _____ Spouse Dec'd ()
6. Parents: Father - Living? Yes () No ()
Mother - Living? Yes () No ()
7. Education: Highest Grade or Level Completed _____
8. Employment at time of offense _____
9. Criminal record _____
10. Describe the relationship between the defendant and the victim (e.g., family member, employer, friend, etc.): _____

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

12. 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: _____

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

b. Was the victim tortured, state the nature of the torture: _____

14. Co-defendants:

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

b. If yes, what conviction and sentence were imposed on them?

c. Nature of co-defendant's role in offense:

d. Any further comments concerning co-defendants:

15. 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 THE 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 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 from which the jury was selected is the same race as the defendant?

- a. Under 10% ()
- b. 10% - 25% ()
- c. 25% - 50% ()
- d. 50% - 75% ()
- e. 75% - 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. Dated 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.

	D.A.	Defense Counsel
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 _____