

**IN THE CRIMINAL COURT FOR HAMILTON COUNTY, TENNESSEE**

<b>STATE OF TENNESSEE</b>	)	
	)	<b>DOCKET NO.: 305662</b>
<b>V.</b>	)	
	)	<b>JUDGE GREENHOLTZ</b>
<b>COURTNEY HIGH</b>	)	<b>Second Division</b>

**MOTION NO. 26: MOTION FOR TRANSFER FROM HAMILTON COUNTY JAIL AND REQUEST FOR HEARING**

COMES NOW, Courtney High, by and through counsel, and files his Motion Number 26, Motion for Transfer from Hamilton County Jail and Request for a Hearing. As for his Motion for Transfer Defendant High would show unto the Court the following:

Defendant High has been condemned to death row by the Hamilton County Sheriff's Department before he has been convicted of any offense alleged in the superseding Presentment. Defendant High is locked in a segregation cell 23 hours a day. When he is taken out of his solitary confinement cell, he is escorted by two "security" officers. Even when Defendant High is brought to visitation, two "security" officers remain in the visitation area for the duration of the legal visit.

Defendant High hereby brings to the Court's attention the following

conditions of confinement, incidents within the jail, and the controlling constitutional, statutory, and case law authority which demonstrate that the Hamilton County Jail has, and continues to, violate his rights

**1. Tennessee Statutory Requirements of Confinement of Prisoners and Protections under the United States Constitution**

Pursuant to *T.C.A. §41-4-108*, a jail administrator is required to provide support to prisoners; and to convey letters from their prisoners and others, and to admit persons having business with the prisoner pursuant to *T.C.A. § 41-4-114*.

A violation of any of the provisions of *T.C.A. §41-4-108-41-4-116*, whether by the sheriff or by any person selected as jailer or guard by the sheriff is a **CLASS A MISDEMEANOR**. *T.C.A. §41-4-117*.

Defendant submits to the Court that he is not being provided support as mandated by law; to the contrary he is being denied basic human rights; is confined to a solitary confinement cell 23 hours a day; is not allowed to shower every day; does not receive exercise time; is not allowed the availability to communicate with other inmates; and has on many occasions not been provided letters sent from counsel nor mailed letters from Defendant High to counsel were never sent. Counsel, as an officer of the court, would further state that he has been denied access to Defendant High on many occasions. Counsel is always told there is not enough available “security” officers to bring Mr. High to the visitation area.

*See, T.C.A. §41-4-114; Sixth and Fourteenth Amendments to the United States*

***Constitution. (citations omitted).***

Though not specifically within the statutory mandated requirements, Defendant High has also been denied adequate medical care and mental health treatment. Counsel has submitted to the jail a diagnosis and medication regime prepared by Dr. Keith Caruso, a double-board certified Forensic Psychiatrist who has examined Defendant High on multiple occasions. The jail has, and continues to, not follow Dr. Caruso's recommended mental health medication regime. These issues would fall with the statutory duty to "provide support to prisoners. *See, T.C.A. §41-4-108; DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189 (1989) ("When the State by the affirmative exercise of its power so restrains an individual's liberty, that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs- e.g., food, clothing, shelter, medical care and reasonable safety- it transgresses the substantive limits set by the Eighth Amendment and the Due Process Clause".)* *See also, Miller v. Calhoun County, 408F/ 3d 803,812-813 (6<sup>th</sup> Cir. 2005), holding the Eighth Amendment protections are afforded to pretrial detainees through the Due Process Clause of the Fourteenth Amendment.)*

The American Bar Association has promulgated Standards on Treatment of Prisoners that the bench and bar should make every effort to comply with such standards as a foundation for the treatment of prisoners. American Bar Association

Standard 23-3-6, reminds the “judiciary that pre-trial detention is *not to punish*” prisoners. There may be several legitimate legal reasons to detain a prisoner pre-trial, but such pre-trial detention may not run afoul of the government’s obligation under the law that in effect are punitive.

## **2. Issues of Confinement and Incidents at the Jail**

Several incidents have occurred at the Hamilton County Jail since Defendant was detained there as a pretrial detainee.

One incident was the alleged finding of contraband (drugs) in Defendant High’s cell. As the Court is aware, Defendant High has been indicted for this incident. But how does an inmate locked down 23 hours a day, and never out of his solitary confinement cell without guards, obtain drugs or any contraband? Common sense would dictate that if such allegation can be proven, there must be one or more co-conspirators who are employed at the Hamilton County Jail for Defendant High to come into possession of any form of contraband.

Another incident occurred when co-defendants Andre Greer, Floyd Davis and others were placed in the elevator, without a transport guard and sent to the 6<sup>th</sup> floor wherein Defendant High is housed. Purportedly they were going to a religious service; however, each man was armed with a “shank”. At this same time, Defendant High was escorted out of his cell by one or more guards. Greer, Davis and the others confronted High and a fight ensued. Luckily, no guards were

injured. But counsel questions why Greer, Davis and the others would be sent to the 6<sup>th</sup> Floor without a guard and then knowingly bring High out of his cell.

A second incident occurred within the last 10 days when Defendant High related to counsel and the investigators that 4 or more guards physically removed him from his cell around 2:00 a.m., took him to an area on the 6<sup>th</sup> floor that is a blind spot from the security cameras, and physically assaulted him by using a taser gun, and punching and kicking him while he laid on the floor of the jail. Defendant High states that Officer Roberts used the taser and that Officers Jones, Lewis, and Thorn physically beat him. He was returned to his cell and refused medical treatment.

According to Defendant High, the next morning when the 1<sup>st</sup> shift supervisor came by, he saw the blood on High's clothing, took a picture of the bloody clothes, and sent him to medical for treatment. *See, State ex.rel. Morris v. National Surety Co., 39 S.W. 2d 581 (Tenn. 1931); Hale v. Johnson, 203 S.W. 949 (Tenn. 1918) (concerning the common law duty of the sheriff to "protect" and treat prisoners "kindly and humanely"). See also, Farmer v. Brennan, 511 U.S. 825 (1994).*

Counsel has learned through the local press of another issue at the jail that is purportedly still under investigation. Counsel cannot elaborate on this issue as counsel does not have sufficient facts to properly plead the matter before the Court.

Defendant High is chained everywhere he goes, and when he meets with

counsel or defense experts, his handcuffs are within a lockbox that prevents him from even having the ability to write.

Defendant High has related to counsel that when the guards come into his cell, they go through his legal documents received from counsel. Several documents given to Defendant High by counsel are now missing, including a copy of the SEALED Juvenile Court records.

Defendant High is being prevented from doing any legal work on his case do to if he leaves his cell, his handcuffs are placed within a lockbox.

Defendant High is also being prevented from exercising his constitutional right to religious freedom. The **Protection of Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §2000cc-1** provides that prisoners, including pretrial detainees retain their First Amendment right to exercise their religion. Though violations of this federal law are normally brought as a civil suit in federal court, it is another violation of Defendant's constitutional rights. As the United States Supreme Court stated in *Cruz v. Beto, 405 U.S. 319 (1972), a policy substantially burdens religious exercise when it bars an inmate from worshipping with others and from using ritualistic items*. Defendant High is a Muslim, and has been and continues to be denied his constitutional right to practice his religion, including having a praying towel and kufi. The Sixth Circuit Court of Appeals in two cases this year have upheld the rights of prisoners to free exercise

of their chosen religion. *Maye v. Klee*, 915 F.3d 1076 (6<sup>th</sup> Cir. 2019); *Cavin v. Michigan Dept. of Corrections*, No. 18-1346, June 17, 2019 (6<sup>th</sup> Cir.) (*published opinion*). Counsel for Defendant High sent a letter to the Hamilton County Sheriff and the Hamilton County Attorney on March 27, 2019, regarding the violations of Defendant High's First Amendment rights. No remedial action has been taken.

### 3. Conclusion

As all the above constitutional and statutory violations clearly demonstrate, in conjunction with the factual assertions contained herein, Defendant High does not need to be detained at the Hamilton County jail. **EVERY DAY DEFENDANT HIGH IS DETAINED AT THE HAMILTON COUNTY JAIL HIS FIRST, SIXTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS GUARANTEED TO HIM ARE VIOLATED.** The only way this Honorable Court can follow the constitutional and statutory authorities cited herein is to transfer Defendant High to another penal facility; whether such transfer be to the Silverdale Detention Center or such other place as the Court may determine.

WHEREFORE, Courtney High prays that this Honorable Court grant this motion and issue an Order immediately transferring him to a different penal facility pending trial of his cases.

Respectfully submitted,

Steven G. Moore, BPR#014701  
Lead Counsel for Courtney High

MOORE & ASSOCIATES, P.C.  
3001 Broad Street, Suite 101  
Chattanooga, TN. 37408  
423/777-4061

#### CERTIFICATE OF SERVICE

I hereby certify that the above motion or pleading was filed with the Clerk of Court and pursuant to the Orders of the Tennessee Supreme Court and the Second Division of Hamilton County Criminal Court, the District Attorney General and all named co-defendants will be served with a copy of said motion or pleading by electronic means.

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Steven G. Moore