

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
	)	Case No. 1:00CR00104
	)	
v.	)	<b>OPINION AND ORDER</b>
	)	
<b>WALTER LEFIGHT CHURCH ,</b>	)	By: James P. Jones
	)	Chief United States District Judge
Defendant.	)	

The appointed attorneys in this concluded capital case seek approval of their final attorneys' fees. I have decided that I will approve the requests in a lesser amount than sought, for the reasons stated in this opinion.

The resolution of the present question requires a brief review of the history of this case. The defendant, Walter Lefight "Pete" Church, and a co-defendant, Samuel Stephen Ealy, were charged by indictment returned on December 13, 2000, with various federal crimes arising out of the brutal murders of Robert Davis, his wife Una Davis, and her fourteen-year-old son, Robert Hopewell, in Pocahontas, Virginia. The government's theory of the case was that Church and Ealy had been hired by a drug kingpin, Charles Gilmore, to kill Robert Davis because Gilmore feared that Davis, a member of Gilmore's drug ring, might inform on him. The government charged that Church and Ealy planned and executed the murder of Davis at night at his home and

then killed Mrs. Davis and her son because they had inadvertently witnessed the murder of Mr. Davis.

Following the murders, Ealy (but not Church) was charged in state court and in 1991 was acquitted by a jury. He denied participation in the murders, and the primary focus of his defense was that Church had killed the Davis family alone.

The case remained unresolved until some years later, when a federal prison inmate named Richard Laszczynski contacted federal prosecutors in this district and told them that Church, who was then incarcerated with Laszczynski, had confessed during jail cell conversations that he and Ealy had committed the murders.<sup>1</sup> Following additional investigation, federal charges were brought against both Ealy and Church and the government gave notice that it intended to seek the death penalty against both defendants. By agreement of the parties, the two defendants were severed for trial, and Ealy was tried first. After a lengthy trial he was convicted, but the jury spared his life and he was sentenced to life imprisonment. On appeal, Ealy's conviction was affirmed. *United States v. Ealy*, 363 F.3d 292 (4th Cir.), *cert. denied*, 125 S. Ct. 227 (2004).

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<sup>1</sup> After Laszczynski came forward, numerous other informants claimed that the defendants had made incriminating statements to them, under various circumstances. The government called many of these witnesses at the several trials.

Following Ealy's conviction, Church was tried, but the jury was unable to reach an unanimous verdict as to his guilt or innocence and I declared a mistrial. During this trial Church testified that at the time of the murders he had been with a girlfriend, Sheri Nichols. Nichols testified on Church's behalf, corroborating his alibi.

Before Church could be retried, the government obtained a superceding indictment, adding Charles Gilmore as a capital defendant. In addition, the government obtained a separate indictment against Sheri Nichols, charging her with committing perjury at Church's first trial. I consolidated the cases for trial and the joint trial of the three defendants lasted from February 2, 2004, until April 8, 2004, when the jury returned a verdict acquitting all defendants of all charges.

All of the defendants were without funds to employ private counsel and thus were entitled to appointed counsel at public expense. Following Church's indictment in 2000, attorneys James C. Turk, Jr. and Beverly M. Davis were appointed to represent him and they continued that representation through both trials.<sup>2</sup> Prior to

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<sup>2</sup> When a defendant is charged with a federal death-eligible criminal offense, the law requires that two attorneys be assigned to him at his request. *See* 18 U.S.C.A. § 3005 (West 2000).

Church's first trial, and in accord with recommended policy,<sup>3</sup> I required the attorneys to submit a budget of attorneys' fees and other projected defense costs. I also authorized the attorneys to submit periodic interim vouchers for their fees and expenses incurred in Church's defense. Prior to the second trial, at my request, the attorneys submitted a new budget.

Other appointed attorneys represented defendants Ealy and Gilmore, and I have received and approved all of their fee requests. I now have before me Church's attorneys' final requests for payment. At my request, the attorneys have submitted a lengthy explanation and justification for the amounts requested, which I have carefully considered.

The prior amounts approved and paid for Church's defense through his first trial, in which there was a hung jury, are as follows:

James C. Turk, Jr. - \$302,987.75;<sup>4</sup>

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<sup>3</sup> See Admin. Office U.S. Courts, *Guide to Judiciary Policies and Procedures* § 6.02(F) (2004).

<sup>4</sup> Of this amount, \$284,112.50 represented fee and \$18,875.25 reimbursement of out-of-pocket expenses. Reimbursable expenses include travel, lodging, toll telephone calls, computer-assisted legal research, and the like. An appointed attorney may not be reimbursed for routine clerical assistance or for general office overhead. The attorneys in this case were authorized to charge \$125 per hour of time spent on the defense, the maximum allowable under current law. See 21 U.S.C.A. § 848(q)(10)(A) (West 1999). Mr. Turk spent a total of 2272.9 hours through the first trial.

Paralegal services from Mr. Turk's office - \$43,751.25;<sup>5</sup>  
Beverly M. Davis - \$262,071.90;<sup>6</sup>  
Other investigative and expert services - \$173,838.68;  
Total - \$782,649.58.<sup>7</sup>

The case budget submitted by Church's attorneys prior to the first trial, as amended, totaled \$417,652, of which amount attorneys' fees were estimated to be \$300,000. Following the first trial, Church's attorneys submitted a budget for the second trial that totaled \$352,500, consisting of attorneys' fees and expenses of \$250,000, paralegal expense of \$40,000, and other services of \$62,500. However, since then the following additional amounts for fees and out-of-pocket expenses have been approved:

James C. Turk, Jr. - \$196,382.15;<sup>8</sup>  
Paralegal services from Mr. Turk's office - \$20,178.75;  
Beverly M. Davis - \$309,206.32;<sup>9</sup>  
Other investigative and expert services - \$131,148.41;  
Total - \$656,915.63.

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<sup>5</sup> Paralegal assistants were authorized to be billed at \$75 per hour. This figure also includes out-of-pocket expenses. Some of the paralegals services were actually provided by other attorneys in the law office, but they were billed at the lower paralegal rate.

<sup>6</sup> Of this amount, \$253,487.50 represented fee and \$8584.40 reimbursement of out-of-pocket expense. Mr. Davis spent 2027.9 hours through the first trial.

<sup>7</sup> This amount does not include miscellaneous court reporter charges for the preparation of transcripts of various hearing and the trial. While in some cases counsel for Church sought the transcripts, they were available to and used by all of the parties.

<sup>8</sup> Representing fee of \$193,350, expenses of \$3032.15, and total hours of 1546.8.

<sup>9</sup> Representing fee of \$306,400, expenses of \$2806.32, and total hours of 2451.2.

Following the acquittal in the second trial, the following vouchers have been submitted and are now before me for approval:

James C. Turk, Jr. - \$239, 224.24;<sup>10</sup>  
Paralegal services from Mr. Turk's office - \$88,058.36;  
Beverly M. Davis - \$128,324.20;<sup>11</sup>  
Other investigative and expert services - \$877.00;  
Total - \$456,483.80.

These present vouchers cover time for Mr. Turk since October 1, 2003; for Mr. Davis since February 2, 2004; and for paralegal time since March 1, 2003.

Were I to approve the present requests without change, the total defense costs for defendant Church would be as follows:

James C. Turk, Jr. - \$738,594.14;  
Paralegal services from Mr. Turk's office - \$151,988.36;  
Beverly M. Davis - \$699,602.42;  
Other investigative and expert services - \$305,864.09;  
Total - \$1,896,049.01.

In comparison, the amounts approved and paid for fees and out-of-pocket expenses for defendant's Ealy's one trial, at which he was convicted and sentenced to life in prison, were as follows:

Thomas R. Scott, Jr. - \$267,658.63;  
Paralegal services from Mr. Scott's office - \$81,966.76;  
Thomas M. Blaylock - \$143,413.25;

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<sup>10</sup> Representing fee of \$218,125, expenses of \$21,099.24, and total hours of 1745.

<sup>11</sup> Representing fee of \$118,950, expenses of \$9374.20, and total hours of 951.6.

Other investigative and expert services - \$96,543;  
Total - \$589,581.64.<sup>12</sup>

The amounts approved and paid for defendant's Gilmore one trial, at which he was acquitted, were as follows:

Anthony F. Anderson - \$271,615.33;  
Stephen J. Kalista - \$274,717.67;  
Paralegal services from Mr. Anderson's office - \$136,861.83;  
Other investigative and expert services - \$75,670.31;  
Total - \$758,865.14.<sup>13</sup>

My obligation in this case is to determine whether the fees and expenses now requested are reasonable under the circumstances, in light of the earlier amounts approved and paid.

It is undisputed that capital cases are uniquely difficult and time consuming for defense counsel. The attorneys in this case clearly performed in an outstanding manner, evidenced not only by the fact that their client was ultimately acquitted and is today a free man, but based on my observations as the trial judge of their performance as the case unfolded. Nevertheless, I have an important obligation to

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<sup>12</sup> This figure does not include the cost of defendant Ealy's appeal. The court of appeals is responsible for approving the fee and expenses for appointed counsel on appeal.

<sup>13</sup> Church's alibi witness, Sheri Nichols, was not charged with a capital offense and thus had only one appointed attorney, who was limited to an hourly rate of \$90. A total amount of \$116,094.89 has been authorized and paid for that defense. Not including the present vouchers under consideration, the total defense costs paid to date for the federal prosecutions arising out of the murders of the Davis family are \$ 2,691,596.10.

carefully review the requests and consider them in the light of experience in other cases.

There are no recent authoritative figures as to the defense costs of federal capital prosecutions. In 1998, it was officially reported that between 1990 and 1997 the average defense cost per representation in federal capital cases that went to trial was \$269,139.<sup>14</sup> In those years there were a limited number of federal capital prosecutions. Since then, such prosecutions have increased dramatically, and estimates indicate that through 2003, the average cost has increased to over \$500,000, with some representations exceeding a million dollars.<sup>15</sup>

My chief concern with respect to the present requests is the fact that the defense of Church for his two trials cost over two and half times his codefendant Gilmore's defense and over three times that of codefendant Ealy's. There is no doubt that this was a complicated case, involving numerous actual and potential witnesses.

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<sup>14</sup> Subcomm. on Fed. Death Penalty Cases, Judicial Conf. of the U.S., *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* iii (May 1998).

<sup>15</sup> The most expensive was likely the capital prosecution of Timothy McVeigh, the Oklahoma City bomber, whose defense through trial and sentencing cost more than \$13.8 million, plus another \$1.3 million until his execution on June 11, 2001. See Catherine Tsai, *McVeigh Defense Cost More Than \$15M*, Associated Press, Oct. 27, 2001, available at 2001 WL 29337852.

Nevertheless, while Church's first trial expense was comparable to the single trial expenses of his codefendants, his second trial expense greatly exceeded that.

The attorneys for Church have responded to my concern, pointing out several facts that, in their opinions, justify this discrepancy:

\* The second trial involved much more than a simple "regurgitation" of the first trial's evidence. The second trial included codefendants, making it more complicated. In addition, there were additional witnesses, including the government's discovery of an alleged eye-witness to the murders a few weeks prior to trial. While the government finally decided not to call this potentially explosive witness, presumably because of credibility concerns, the disclosure shortly before trial caused considerable additional time and effort to the defense.

\* With the experience of the first trial, and the opportunity to interview the jury after it was discharged, the Church defense team knew that additional efforts were needed to discredit the government's primary witnesses—many of them so-called "jail-house snitches." For example, the government's principal informant, Richard Laszczyński, was cross examined for about three hours in the first trial, but for three days during the second trial. In the first trial, approximately fifteen exhibits were used in Laszczyński's cross examination, but approximately one hundred and forty in the second.

\* Comparisons with the codefendant's single trials are misleading. Ealy's lead counsel, Thomas R. Scott, Jr., represented him in his state trial and thus needed less time spent in preparation. In the joint trial with Gilmore, Church's defense team took the lead because Church required a more aggressive defense. Most of the government's evidence was directed at Church. Moreover, Church was a flawed individual who a jury might well believe was capable of these murders. In comparison, Gilmore, while an admitted drug dealer, had been a respected member of the community for many years and was in fact mayor of the small town of Pocahontas at the time of the murders. Church's defense was clearly key to the case and Gilmore's counsel was obviously content to play a secondary role.

While the defense costs in this case were very large and greatly exceeded the budgets submitted, I find that the circumstances justified large fees. The case was complex and was made more complex after the first trial because of the additional defendants charged. The centrality of the informants' testimony to the government's case against Church required time-consuming investigation and preparation for their cross examination, some of which by necessity came after the first trial. As in most capital cases, the pretrial motion practice was extensive, requiring considerable legal research and briefing.

Nevertheless, while a large fee is justified in this case, I find it appropriate to reduce the present requests, taking into account the codefendants' defense costs, the initial budgets, and experience in other capital cases. Accordingly, I will reduce the present fees requested to \$148,566 for Mr. Turk and \$51,066 for Mr. Davis. In addition, I will recommend to the chief judge of the circuit that the paralegal request for Mr. Harrison in Mr. Turk's office, be reduced to \$69,000.<sup>16</sup> These reductions represent ten percent of the total fees paid and requested.<sup>17</sup> I find these amounts reasonable under the circumstances.

It is so **ORDERED**.

ENTER: November 24, 2004

/s/ JAMES P. JONES  
Chief United States District Judge

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<sup>16</sup> While I have the authority to finally approve the attorneys' fees and expenses, the chief judge of the circuit must ultimately approve other defense services, including paralegal fees and expenses. *See* 21 U.S.C.A. § 848(q)(10)(B) (West 1999).

<sup>17</sup> A recapitulation appears as an appendix to this Opinion and Order.

Appendix to Opinion and Order, United States v. Church, Case No. 1:00CR00104

RECAPITULATION OF DEFENSE FEES AND EXPENSES

Previously Paid:

Turk	\$499,369.90 (Fee - \$477,462.50)
Davis	\$571,278.22 (Fee - \$559,887.50)
Turk Paralegal	\$63,930
Other Services	\$304,987.09
<b>Total Previously Paid</b>	<b>\$1,439,565.21</b>

Additional Requested:

Turk	\$239,224.24 (Fee - \$218,125)
Davis	\$128,324.20 (Fee - \$118,950)
Turk Paralegal	\$88,058.36
Other Services	\$877
<b>Total Additional Requested</b>	<b>\$456,483.80</b>

Additional Approved:

Turk	\$169,665.24 (Fee - \$148,566)
Davis	\$60,440.20 (Fee - \$51,066)
Turk Paralegal	\$69,000
Other Services	\$877
<b>Total Additional Approved</b>	<b>\$299,982.44</b>

**Total Paid and Approved**      **\$1,739,547.65**