

# In the Supreme Court of Ohio

State of Ohio,

ON COMPUTER-ALM

Plaintiff-Appellee,

v.

Case No. 2006-1366

Duane Allen Short,

Defendant-Appellant.

**FILED**  
 NOV 13 2006  
 MARCIA J. MENGEL, CLERK  
 SUPREME COURT OF OHIO

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On Appeal from the  
 Montgomery County Court of Common Pleas  
 Case No. 2004 CR 02635

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**RECEIVED**  
 NOV 13 2006  
 MARCIA J MENGEL, CLERK  
 SUPREME COURT OF OHIO

**Motion for Extension of Time  
 for Transmission of the  
 Record**

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**The Case Involves a Sentence  
 of Death**

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CARLEY INGRAM  
 Assistant Prosecuting Attorney  
 Montgomery County, Ohio  
 Post Office Box 972  
 301 West Third Street, Fifth Floor  
 Dayton, Ohio 45422  
 (937)

*Attorney for Plaintiff-Appellee*

GARY W. CRIM (0020252)  
 943 Manhattan Avenue  
 Dayton, Ohio 45406-5141  
 (937) 276-5770  
 (937) 268-5188, Fax

DENNIS J. ADKINS (0034488)  
 Altick & Corwin., L.P.A.  
 1700 One Dayton Centre  
 One South Main Street  
 Dayton, Ohio 45402  
 (937) 223-1201  
 (937) 223-5100, Fax

*Attorneys for Duane Allen Short*

***Motion for Extension of Time for Transmission of the Record***

Pursuant to Rule XIX, Section 4, Counsel on behalf of Duane Allen Short moves this Court for an order extending the time for the Clerk to file the record for an additional 30 days.

***Memorandum in Support of Motion***

This is the first time that counsel has been involved in the preparation of a record involving a video record. Further time is needed to complete the transcription of the trial and the various hearings. See Attached Affidavit of Megen Wlswick. Counsel believes that the transcriptionist now has all of the court proceedings. She has had particular difficulty with the voir dire. The attorneys were not paying attention to the microphones during the voir dire and she must listen to each line over-and-over in order to decipher what they are saying. This is extremely time consuming.

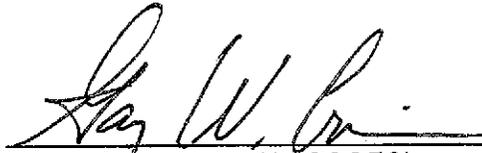
Mr. Short is entitled to a complete copy of his transcript, which is necessary for his appeal. *State ex rel. Spirko v. Court of Appeals*, 27 Ohio St.3d 13, 501 N.E.2d 625 (1986). Counsel cannot effectively represent Mr. Short on appeal without a complete transcript. *In re Petition of Brown*, 49 Ohio St. 3d 222, 551 N.E.2d 954 (1990); *Evitts v. Lucy*, 469 U.S. 387 (1985).

In both this Court and the Ohio Supreme Court, Mr. Short is entitled to a host of procedural protections. These include a review of all errors, as in all

criminal case, and because of the death sentence, an independent balancing of the mitigating and aggravating factors, OHIO REV. CODE § 2929.05. All of these require a thorough review of the record.

Counsel for the Government has indicated that she has no opposition to this motion.

Respectfully Submitted,



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GARY W. CRIM (0020252)  
943 Manhattan Avenue  
Dayton, Ohio 45406-5141  
(937) 276-5770  
(937) 278-5188, Fax



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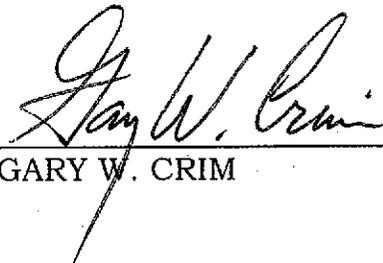
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Altick & Corwin., L.P.A.  
1700 One Dayton Centre  
One South Main Street  
Dayton, Ohio 45402  
(937) 223-1201  
(937) 223-5100, Fax

Attorneys for Duane Allen Short

**Certificate of Service**

I certify that on November 9, 2006, I served a copy of this Motion for Extension of Time for Transmission of the Record by depositing it in the United States mail, first class postage prepaid, addressed to:

Carley Ingram  
Assistant Prosecuting Attorney  
Montgomery County, Ohio  
Post Office Box 972  
301 West Third Street, Fifth Floor  
Dayton, Ohio 45422.

  
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GARY W. CRIM

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*Affidavit of Megen Elswick*

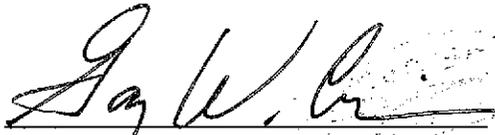
Now comes Megen Elswick for her affidavit, saying:

1. I have agreed to transcribe the trial testimony in this case from the video tapes provided by Mr. Crim and Mr. Adkins.
2. I have completed all of the trial but still have to prepare the voir dire testimony and short hearings from the beginning of the case. The voir dire has proven to be very difficult. The attorneys were not careful about being close to a microphone and many of their voices are very faint.
3. Mr. Crim recently provided me with additional hearings from the beginning of the trial; however, these are relatively small and can be transcribed relatively easily.
4. Mr. Crim and Mr. Adkins have not had an opportunity to review the transcripts to make sure that the entire case has been transcribed.

5. I believe that I can complete this in an additional 30 days.

  
MEGEN ELSWICK

Sworn to and subscribed in my presence on November 4, 2006.

  
Notary Public

**GARY W. CRIM, Attorney at Law**  
**Notary Public, State of Ohio**  
**My Commission has no expiration date.**  
**Section 147.03 O.R.C.**