

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

* Supreme Court No.: 2007-2027

Appellee,

*
* On Appeal from the
* Lucas County Court of
* Common Pleas
* Case No. CR06-3581

vs.

WAYNE S. POWELL,

*
*
*
*

Appellant.

DEATH PENALTY CASE

MOTION TO SUPPLEMENT THE RECORD

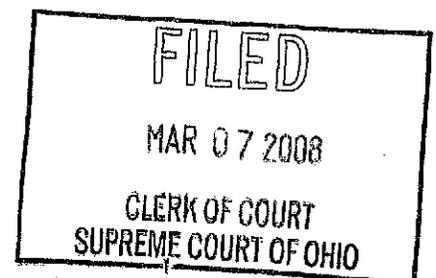
SPIROS P. COCOVES (0030396) (COUNSEL OF RECORD)
610 Adams Street, Second Floor
Toledo, Ohio 43604-1423
419/241-5506 (voice)
419/242-3442 (fax)

and

GARY W. CRIM (0020252)
943 Manhattan Avenue
Dayton, OH 45406-5141
937/276-5770 (voice)
937/278-5788 (fax)

COUNSEL FOR APPELLANT, WAYNE S. POWELL

Julia R. Bates, Prosecuting Attorney (COUNSEL OF RECORD)
Lucas County Courthouse
700 Adams Street
Toledo, Ohio 43624
Phone: (419) 213-4700
Fax: (419) 213-4595
COUNSEL FOR APPELLEE, STATE OF OHIO



Motion to Supplement the Record
of Appellant Wayne S. Powell

Appellant, Wayne S. Powell, through undersigned counsel, moves this Court, pursuant to Ohio Sup. Ct. R. Prac. XIX, Section 3(D), for an order that the record be supplemented with a transcript that was not transferred to this Court as part of the record in this case. The reasons for this motion are more fully set forth in the following memorandum in support.

Respectfully submitted,

SPIROS P. COCOVES (0030396)
610 Adams Street, Second Floor
Toledo, Ohio 43604
Phone: (419) 241-550
Fax: (419) 242-3442
Counsel of Record

GARY W. CRIM (0020252)
943 Manhattan Avenue
Dayton, OH 45406-5141
937/276-5770 (voice)

COUNSEL FOR APPELLANT,
WAYNE S. POWELL

MEMORANDUM IN SUPPORT OF MOTION TO SUPPLEMENT THE RECORD

Appellant, Wayne S. Powell, was convicted of aggravated murder and sentenced to death. He is currently before this Court on an appeal as of right.

Upon review of this case, counsel for Appellant Powell discovered that parts of the record were missing from the record filed with the Clerk of this Court. See Cocoves Affidavit [Exhibit A]. Specifically, the record was missing the transcript from a hearing held on July 30, 2007, in the Lucas County Common Pleas Court. This transcript is necessary to the determination of the questions presented in this appeal.

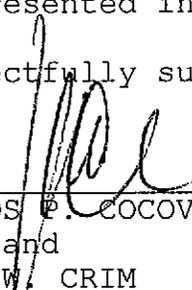
Because Powell was convicted of a capital crime and sentenced to death, appellate review of the entire record during his direct appeals is mandated by R.C. 2929.05. Supplementation of the record is therefore necessary in order to comply with this statutory mandate.

In capital cases, it is essential that all proceedings be accurately transcribed and incorporated into the record. Article I, Section 16 of the Ohio Constitution mandates that a defendant be provided a "complete, full, and unabridged transcript of the proceedings" in order that he be able to prosecute his appeals effectively. State ex rel. Spirko v. Court of Appeals (1986), 27 Ohio St. 3d 13, 16-17, 501 N.E.2d 625, 627. The presence of a complete record at the appellate stage is essential in order for the courts to engage in their statutory duty to review all of the facts and other evidence in the record. Id. at 16; U.S. Const. amend. XIV; Evitts v. Lucey (1985), 469 U.S. 387; State v. Buell (1994), 70 Ohio St.3d. 1211; R.C. § 2929.05.

Counsel is attempting to affirmatively invoke the procedures mandated by Ohio Sup. Ct. R. Prac. XIX, Section 3(D) in order to preserve the right to appeal any errors contained in or supported by the omitted or incorrect material. In accordance with this Court's mandate, Powell is availing himself of the procedures to supplement the portions of the record that are missing.

WHEREFORE, Powell asks this Court to permit him to supplement the record with the transcript of the July 30, 2007 hearing in order to provide this Court with all information that is necessary to the determination of the questions presented in this appeal.

Respectfully submitted,

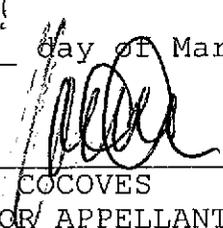


SPIROS P. COCOVES
and
GARY W. CRIM

COUNSEL FOR APPELLANT,
WAYNE S. POWELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion to supplement the record was sent by regular U.S. Mail, postage prepaid, to Julia Bates, Lucas County Prosecuting Attorney, Lucas County Courthouse, 700 Adams Street, Toledo, Ohio 43624, counsel of record for appellee, State of Ohio, this 4th day of March 2008.



SPIROS P. COCOVES
COUNSEL FOR APPELLANT,
WAYNE S. POWELL

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DEATH PENALTY CASE

AFFIDAVIT OF SPIROS P. COCOVES

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610 Adams Street, Second Floor

Toledo, Ohio 43604-1423

419/241-5506 (voice)

419/242-3442 (fax)

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943 Manhattan Avenue

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Julia R. Bates, Prosecuting Attorney (COUNSEL OF RECORD)

Lucas County Courthouse

700 Adams Street

Toledo, Ohio 43624

Phone: (419) 213-4700

Fax: (419) 213-4595

COUNSEL FOR APPELLEE, STATE OF OHIO

STATE OF OHIO,

COUNTY OF LUCAS, SS:

I, Spiros P. Cocoves, after being duly sworn according to law, state as follows:

1) I am an attorney licensed to practice law in the State of Ohio.

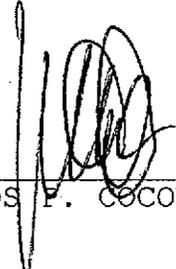
2. I am lead counsel in State v. Wayne S. Powell, a capital case on direct appeal before the Supreme Court of Ohio.

3. On or about February 13, 2008, I reviewed the transcribed proceedings in this matter. Missing was the transcript for a hearing held July 30, 2007 in the Lucas County Common Pleas Court.

4. I learned that the hearing has been transcribed but for some reason a copy was not included in the record that was transmitted to this Court.

5. The July 30, 2007 hearing transcript is necessary for the full and fair review of this case and in order for the Supreme Court of Ohio to fulfill its responsibility under R.C. 2929.05.

Further Affiant saith naught.



SPIROS P. COCOVES

Sworn to and subscribed in my presence this ___ day of February 2008.



NOTARY PUBLIC
TRISTA K. PHILLIPS
NOTARY PUBLIC • STATE OF OHIO
Recorded in Lucas County
My commission expires July 22, 2012