

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

vs.

CALVIN NEYLAND, JR.,

Appellant.

* Supreme Court No.:2008-2370
*
* On Appeal from the
* Wood County Court of
* Common Pleas
*
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* Common Pleas
* Case No. 2007-CR-0359

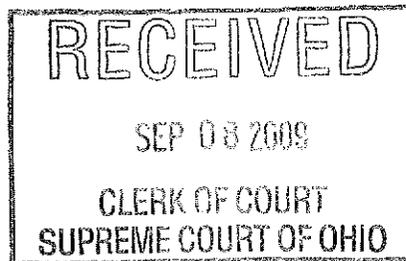
DEATH PENALTY CASE

MOTION OF APPELLANT CALVIN NEYLAND, JR.
TO SUPPLEMENT THE RECORD

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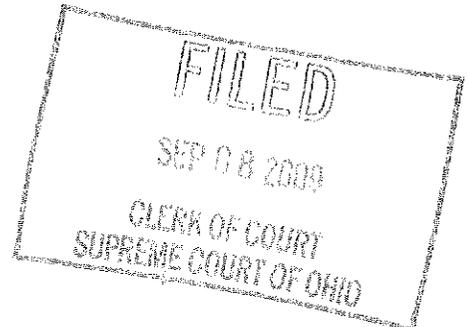
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Motion to Supplement the Record
of Appellant Calvin Neyland, Jr.

Appellant, Calvin Neyland, Jr., through undersigned counsel, moves this Court, pursuant to Ohio Sup. Ct. R. Prac. XIX, Section 3(D), for an order that the Perrysburg Municipal Court file with this Court a copy of the proceedings held in the Perrysburg Municipal Court on August 9, 2007, 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.

MEMORANDUM IN SUPPORT

Mr. Neyland was convicted of two counts of aggravated murder and sentenced to death. He is currently before this Court on appeal as a matter of right. The Clerk of the Wood County Common Pleas Court has submitted to this Court the record from the trial.

Upon review of this case, counsel for Appellant Neyland discovered that parts of the record were missing from the record filed with the Clerk of this Court. Specifically, the record is missing a transcript of a hearing held on August 9, 2007, in the Perrysburg Municipal Court, under Case No. CRA07-01294. This transcript is necessary to the determination of the questions presented in this appeal.

Because Mr. Neyland 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, Mr. Neyland is availing himself of the procedures to supplement the portions of the record that are missing.

WHEREFORE, Calvin Neyland, Jr. asks this Court order the Perrysburg Municipal Court to file with this Court a copy of the proceedings held in the Perrysburg Municipal Court on August 9, 2007 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
ANN M. BARONAS

COUNSEL FOR APPELLANT,
CALVIN NEYLAND, JR.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered by regular U.S. Mail to the office of the Wood County Prosecuting Attorney, Wood County Common Pleas Court, One Courthouse Square, Bowling Green, OH 43402 the 9th day of September 2009.



Spiros P. Cocoves
COUNSEL FOR APPELLANT,
CALVIN NEYLAND, JR.