

In The Supreme Court Of Ohio

State Of Ohio, :
 Appellee, :
 v. : Case No.: 2010-1373
 Ashford Thompson, :
 Appellant. : **This Is A Capital Case.**

APPELLANT THOMPSON'S MOTION TO SUPPLEMENT THE RECORD

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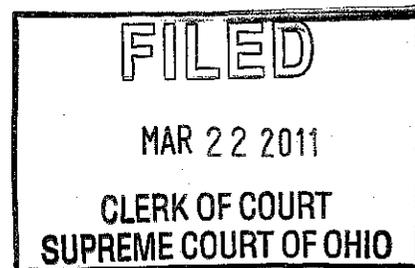
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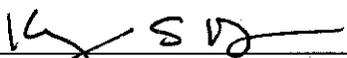
On Appeal From The Court Of
Common Pleas Of Summit County
Case No. CR 2008-07-2390

APPELLANT THOMPSON'S MOTION TO SUPPLEMENT THE RECORD

Pursuant to Ohio Sup. Ct. R. Prac. 19, § 3(D), Appellant Ashford Thompson moves this Court to order that the record be supplemented with the jury questionnaires. Thompson was convicted of a capital crime and sentenced to death. Ohio Rev. Code Ann. § 2929.05 mandates appellate review of the entire record in his direct appeal. It is necessary to supplement the record in order to comply with this statutory mandate. The reasons for this request are set forth in the attached memorandum.

Respectfully submitted,

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Memorandum

Ashford Thompson was convicted of aggravated murder and sentenced to death. He is currently before this Court on an appeal of right. The record on appeal in Thompson's capital case is incomplete because the jury questionnaires are not included. Thompson requests that this Court order the Summit County Clerk of Courts to supplement the record with the jury questionnaires. *See State v. Mammone*, 127 Ohio St. 3d 1465 (2010); *State v. Davis*, 108 Ohio St. 3d 1501 (2006); *State v. Johnson*, 104 Ohio St. 3d 1430 (2004); *State v. Hand*, 102 Ohio St. 3d 1414 (2004).

The trial judge indicated on the record that the juror questionnaires were preserved. *See* November 12, 2008 status conference, p. 34 ("Well, we're required to keep them because we've had situations where the media has done a public records request and collected all the questionnaires, all 250 questionnaires"). *See also id.* at 30. They are not, however, currently a part of the record. Thompson's counsel has contacted the trial court reporter, the clerk's office, and the trial judge's bailiff in an effort to obtain the questionnaires, and none have located them.

Counsel has also reviewed Thompson's trial attorneys' files in an effort to locate the questionnaires, without success.

It is possible that they are no longer in existence. But because the trial court's statements on the record indicate otherwise, Thompson requests an order from this Court that the county produce and supplement the record with the questionnaires.

Under § 16, Article I of the Ohio Constitution, Thompson is entitled to a "complete, full, and unabridged transcript of all proceedings against him so that he may prosecute an effective appeal." *State ex. rel. Spirko v. Court of Appeals, Third Appellate Dist.*, 27 Ohio St. 3d 13, 18 (1986). Appellate counsel must present to this Court any and all errors apparent from the record. The jury questionnaires are an important part of his appellate record. *See State v. Murphy*, 91 Ohio St. 3d 516, 530 (2001) ("Unfortunately, the [juror] questionnaires are not in the record").

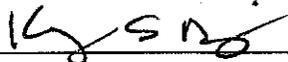
Without a complete record for review, counsel cannot provide effective representation to Thompson on his first appeal of right. *Cf. Evitts v. Lucey*, 469 U.S. 387, 394 (1985). The United States Supreme Court has "emphasized . . . the importance of reviewing capital sentences on a *complete record*." *Dobbs v. Zant*, 506 U.S. 357, 358 (1993) (emphasis added). And "meaningful appellate review" plays a "crucial role . . . in ensuring that the death penalty is not imposed arbitrarily or irrationally." *Parker v. Dugger*, 498 U.S. 308, 321 (1991).

Sup. Ct. R. Prac. XIX, § 3(D) authorizes this Court to direct supplementation of material items omitted from the record by error or accident. Further, O.R.C. § 2929.05 mandates that this Court review the entire record in a capital case. This Court should correct the record and order the trial jurors' questionnaires to be certified into the appellate record.

WHEREFORE, Thompson requests that this Court order that the Summit County Clerk supplement the jury questionnaires into the record before this Court.

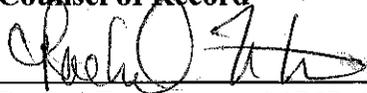
Respectfully submitted,

Office of the
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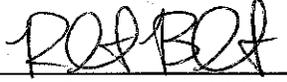


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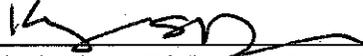
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Counsel For Appellant

Certificate Of Service

I hereby certify that a true copy of the foregoing Motion was forwarded by regular U.S. Mail to Richard Kasay, Assistant Summit County Prosecutor, 53 University Ave., Akron, Ohio 44308, this 22nd day of March, 2011.



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