

**In The Supreme Court Of Ohio**

State Of Ohio, :  
Appellee, :  
-Vs- : Case No.: 2006-1366  
Duane A. Short, :  
Appellant. : **This Is A Capital Case.**

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

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**Motion to Supplement the Record**

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Mathias H. Heck, Jr.  
Montgomery County Prosecutor

Office of the  
Ohio Public Defender

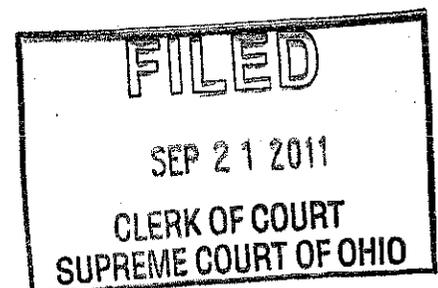
Carley J. Ingram  
Assistant Prosecuting Attorney

Kimberly S. Rigby - 0078245  
Assistant State Public Defender  
Counsel of Record

Gregory A. Hoover – 0083933  
Assistant State Public Defender

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Counsel For Appellant



**In The Supreme Court Of Ohio**

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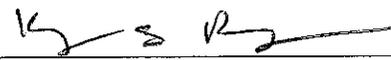
**Motion to Supplement the Record**

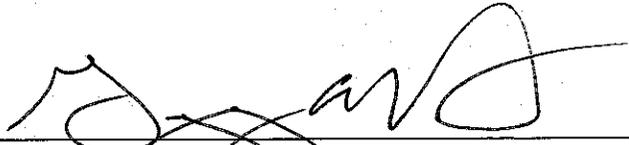
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Appellant Duane Allen Short hereby moves this Court to order the Clerk of the Montgomery County Court of Common Pleas to locate, certify, and transmit all General Jury Questionnaires, Jury Pool Reports and Special Jury Questionnaires prepared in this case to this Court along with any other portions of the record that were sealed for appellate review. Ohio Rev. Code Ann. § 2929.05 mandates appellate review of the entire record in the direct appeal. Supplementation of the record is therefore necessary to comply with this statutory mandate. Also, appellate counsel cannot fulfill their role as zealous advocates for Appellant Short without the benefit of a complete record. A memorandum is attached.

Respectfully submitted,

Office of the  
Ohio Public Defender

By:   
Kimberly S. Rigby - 0078245  
Assistant State Public Defender  
Counsel of Record

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Counsel For Appellant

**Memorandum in Support**

Appellant Duane Short was convicted of aggravated murder and sentenced to death. This Court denied his direct appeal as of right on July 29, 2011. See *State v. Short*, Slip Opinion No. 2011-Ohio-3641. However, Appellant is still before this Court for purposes of filing an Application to Re-open pursuant to S. Cr. Prac. R. XI, Section 6. Under Article I, § 16, of the Ohio Constitution, he 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, 501 N.E.2d 625, 629 (1986). The record before this Court is not complete.

Direct appeal counsel for Short filed a Motion to Unseal Record with this Court on April 11, 2007. See Exhibit A. On April 30, 2007, this Court granted the motion. See Exhibit B. However, when current appellate counsel attempted to review those questionnaires and any other unsealed portions of the record, they discovered that these unsealed portions of the record were never submitted along with the rest of the appellate record and are not contained in the record at this Court. Apparently direct appeal counsel failed to either 1) review the record before this Court to ensure that those unsealed portions of the record were a part of the record or 2) file a motion to supplement those unsealed portions of the record into the appellate record before this

Court. As such, current appellate counsel now move this Court to Order that these unsealed portions of the record be supplemented into the appellate record before this Court. These portions of the record may have presented issues for Short's Direct Appeal, and subsequently, may now present issues for his Application to Re-open.

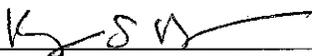
A thorough review of the entire record is necessary to give Short a full and fair opportunity to litigate his appeal as of right in both this Court and the Common Pleas Court of Montgomery County. Without a complete record for review, counsel cannot provide effective representation to Short. See *State v. Buell*, 70 Ohio St. 3d 1211, 639 N.E.2d 110 (1994); *Evitts v. Lucey*, 469 U.S. 387 (1985).

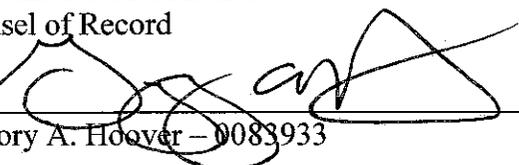
### Conclusion

The general jury questionnaires, jury pool reports, special jury questions, and other portions of the record are not before this Court, despite having been ordered unsealed. They should be made part of the record for appellate review. WHEREFORE, Appellant Duane Short requests that this Court order the Clerk of the Montgomery County Court of Common Pleas to locate and transmit to this Court the general jury questionnaires, jury pool reports, special jury questionnaires, and any other portions of the record which were sealed for appellate review and unsealed by Order of this Court. See Exhibit B.

Respectfully submitted,

Office of the  
Ohio Public Defender

By:   
\_\_\_\_\_  
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Assistant State Public Defender  
Counsel of Record

By:   
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Gregory A. Hoover - 0083933

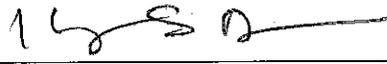
Assistant State Public Defender

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Counsel For Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that on September 21, 2011, I served a copy of this Motion to Supplement by depositing it in the United States mail addressed to:

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

By:   
\_\_\_\_\_  
Kimberly S. Rigby - 0078245  
Counsel For Appellant

#350189

# In the Supreme Court of Ohio

State of Ohio,

Plaintiff-Appellee,

v.

Case No. 2006-1366

Duane Allen Short,

Defendant-Appellant.

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On Appeal from the  
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**Motion to Unseal Record**

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**The Case Involves a Sentence  
of Death**

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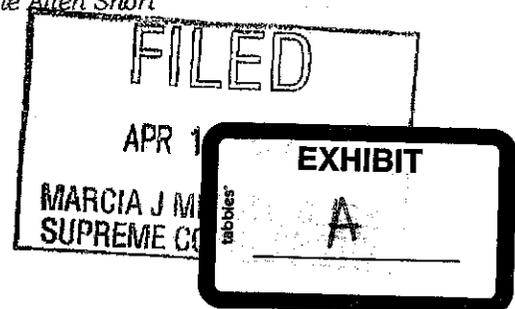
CARLEY INGRAM  
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*Attorney for Plaintiff-Appellee*

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*Attorneys for Duane Allen Short*



### ***Motion to Unseal Record***

Duane Allen Short moves this Court for an order unsealing the proceedings that took place in the Common Pleas Court of Montgomery County, Case No. 04 CR 2635, which the trial court ordered to be sealed and made a part of the record in this case.

### ***Memorandum in Support of Motion***

Mr. Short was convicted of aggravated murder and sentenced to death. He is currently before this Court on an appeal as of right. On December 14, 2006 the Montgomery County Clerk of Court's submitted to this Court the record from Short's capital trial. Along with the submitted record were juror questionnaires filed under seal. Short moves this Court to unseal these documents for counsel's review.

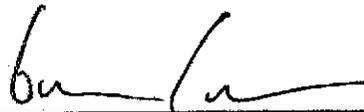
Mr. Short has a right to a complete and unabridged record for his capital appeal. *State ex rel. Spirko v. Court of Appeals, Third Appellate District*, 27 Ohio St. 3d 13, 16, 501 N.E.2d 625, 627 (1986). *See also State v. D'Ambrosio*, 67 Ohio St. 3d 185, 200, 616 N.E.2d 909, 921 (1993). Further, SUP. R. PRAC. 19(3)(A) states that the record on appeal in death cases "shall consist of the original papers filed in the trial and exhibits to those papers [as well as] the transcript of proceedings, including all exhibits..."

The trial court's direction that these motions be sealed as a part of the record in Mr. Short's aggravated murder case demonstrates the court's express belief that these proceedings were directly relevant to his capital case. Pursuant to SUP. R. PRAC. 19(3)(A) and (D), these materials are documents that may be material to Short's appeal.

These portions of the record may present issues for Mr. Short's Merit Brief and oral argument. A thorough review of the entire record is necessary to give Mr. Short a full and fair opportunity to litigate his appeal as of right in both this Court and the Common Pleas Court of Montgomery County. Without a complete record for review, counsel cannot provide effective representation to Mr. Short. *See State v. Buell*, 70 Ohio St. 3d 1211, 639 N.E.2d 110 (1994); *Evitts v. Lucey*, 469 U.S. 387 (1985).

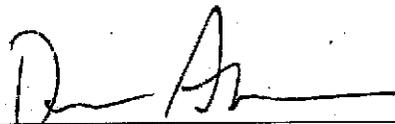
WHEREFORE, Defendant requests an order from this Court unsealing all portions of the record filed under seal by the Montgomery County Clerk's Office.

Respectfully Submitted,



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Per telephone  
authorization  
Justin Thompson  
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*Per Telephone Authorization  
Justin Thompson  
(0078817)*

Attorneys for Duane Allen Short

**Certificate of Service**

I certify that on April 11, 2007, I served a copy of this Motion to Unseal 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.



GARY W. CRIM

*Per Telephone Authorization  
Justin Thompson  
(0078817)*

State of Ohio

Case No. 2006-1366

v.

ENTRY

Duane Short

This cause is pending before the Court as a death penalty appeal from the Court of Common Pleas for Montgomery County. Upon consideration of appellant's motion to unseal portions of the record,

It is ordered by the Court that the motion is granted.

(Montgomery County Court of Common Pleas; No. 2004CR02635)

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THOMAS J. MOYER  
Chief Justice

