

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

PLAINTIFF-APPELLEE

-vs-

WILLIE G. WILKS, JR.

DEFENDANT-APPELLANT

CASE NO.: **2014-1035**

ON APPEAL FROM **MAHONING
COUNTY COURT OF COMMON PLEAS.**

TRIAL COURT

Case No. **2013 CR 540**

DEATH PENALTY CASE

**STATE OF OHIO-APPELLEE'S RESPONSE TO DEFENDANT'S
EMERGENCY MOTION FOR EXPEDITED RULING**

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Law and Argument

To begin, the State would join in Defendant's request for an expedited ruling on Defendant's Motion to Strike this Court's Notice of Filing and his Motion to Complete the Record, which Defendant filed on April 20, 2015. As stated in its earlier response, the State would join Defendant's Motion to Strike this Court's November 24, 2014 Notice of Filing of the Record, and request this Court to issue a notice that the complete record was filed on January 21, 2015.

Second, the State submitted a copy of the Prosecutor's file that the trial court reviewed before it filed the Prosecutor's file under seal and it made part of the appellate record pursuant to the trial court's July 24, 2013 and May 21, 2014 judgment entries. Thus, a remand is unnecessary to have the trial court merely confirm that it did in fact review the Prosecutor's file before it filed it under seal.

Third, Defendant is not entitled to a complete copy of the entire Prosecutor's file *and* the Youngstown Police Department's file, including any and all hand-written notes that were produced by the officers and/or assistant prosecutors during the investigation and/or prosecution. The record is devoid of any judgment entry that ordered the State to submit the Youngstown Police Department's file for review and to be sealed for appellate purposes. As for the Prosecutor's file, the State submitted its file, the trial court found that it complied with its earlier July 24, 2013 judgment entry, and the trial court ordered the file sealed for appellate purposes.

The trial court's May 21, 2014 judgment entry demonstrates that the State complied with the trial court's July 24, 2013 judgment entry. On May 20, 2014, the State filed a motion directing the trial court to review the submitted Prosecutor's file to

determine if it complied with the trial court's July 24, 2013 judgment entry. The State's motion specifically states, "in compliance with prior order of the Court, requesting the attached file be reviewed, made part of the record, and the contents be sealed for purposes of appellate review."

In response to the State's motion and submitted file, the trial court "reviewed the items and hereby orders that the contents be filed under seal for appellate review." The trial court's May 21, 2014 unambiguously indicates that it reviewed the submitted Prosecutor's file, found that it complied with its earlier July 24, 2013 judgment entry, and ordered the file sealed for appellate purposes. Thus, the trial court *reviewed* the Prosecutor's file and found that it *complied* with its July 24, 2013 judgment entry.

Furthermore, the trial court ordered the State to submit a copy of its file despite the fact that this Court has "consistently rejected the argument that a trial court must 'examine the prosecutor's file to determine the prosecutor's truthfulness or seal the prosecutor's file for purposes of appellate review' on the basis of speculation that the prosecutor *may* have withheld exculpatory evidence." (Emphasis sic.) *State v. Hancock*, 108 Ohio St.3d 57, 2006 Ohio 160, 840 N.E.2d 1032, ¶ 64, quoting *State v. Hanna*, 95 Ohio St.3d 285, 2002 Ohio 2221, 767 N.E.2d 678, ¶ 60, citing *State v. Chinn*, 85 Ohio St.3d 548, 569, 709 N.E.2d 1166 (1999); accord *State v. Hunter*, 131 Ohio St.3d 67, 2011 Ohio 6524, 960 N.E.2d 955, ¶ 136.

Therefore, the trial court did not order the State to submit the Youngstown Police Department's file for review and to be sealed for appellate purposes, as it did the Prosecutor's file, and the trial court found the State's file *complied* with its earlier July 24, 2013 judgment entry that ordered the file sealed for appellate purposes. The record

before this Court is *complete*, because Prosecutor's file, as previously reviewed and ordered sealed for appellate purposes, is on record with this Court.

Defendant further contends that it is entitled to any and all "work product," which would include any and all hand-written notes that were produced by the officers and/or assistant prosecutors during the investigation and/or prosecution. This would also include the State's copies of the juror questionnaires, because they contain numerous notations from the assistant prosecutors made during voir dire.

This Court previously recognized in *State v. Jenkins* that a police officer's notes, which recite matters beyond the witness's personal observations, regarding the officer's investigative decisions and interpretations, were privileged and excluded from discovery under former Criminal Rule 16(B)(2). *See State v. Jenkins*, 15 Ohio St.3d 164, 225, 473 N.E.2d 264 (1984); *accord State v. Cunningham*, 105 Ohio St.3d 197, 2004 Ohio 7007, 824 N.E.2d 504, ¶ 43; *State v. Rich*, 12th Dist. No. CA2012-03-044, 2013 Ohio 857, ¶ 67 (recognizing that police-related work product is privileged and excluded from discovery); *State v. Inman*, 4th Dist. No. 12 CA 16, 2013 Ohio 3351, ¶ 26 (stating that "notes taken by a prosecutor, which are not reviewed, adopted or signed by the witness, do not constitute discoverable statements within the meaning of Crim.R. 16.").

Thus, Defendant is not entitled to any of the State's work product, which would include any and all hand-written notes that were produced by the officers and/or assistant prosecutors during the investigation and/or prosecution.

Therefore, as of January 21, 2015, a *complete* copy of the record has been transmitted and filed with this Honorable Court.

Conclusion

WHEREFORE, State of Ohio-Appellee hereby requests this Honorable Court Expedite its Ruling on Defendant-Appellant Willie G. Wilks, Jr.'s Motions, and Deny his request for relief in-part. The State specifically requests this Court to—

- **Sustain Defendant's request to Strike this Court's November 24, 2014 Notice of Filing of the Record;**
- **Sustain Defendant's request to Issue a Notice that the Complete Record was Filed on January 21, 2015;**
- **Deny Defendant's request for the State to File Under Seal a Separate Copy of the Youngstown Police Department's File;**
- **Deny Defendant's request for the State to File Under Seal additional materials in the Prosecutor's File that include Time-Stamped Motions, Pleadings, and Judgment Entries;**
- **Deny Defendant's request for the State to File Under Seal any "Work Product" contained within the Prosecutor's File, which include the State's Copies of Juror Questionnaires; and**
- **Deny Defendant's request for a Remand to the Trial Court for an Evidentiary Hearing.**

Respectfully Submitted,

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MAHONING COUNTY PROSECUTOR BY:

/s/ Ralph M. Rivera

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Certificate of Service

I certify that a copy of the State of Ohio's Response was sent via **Regular U.S. Mail** to counsel for Defendant, **John B. Juhasz, Esq.**, and **Lynn Maro, Esq.**, at 7081 West Boulevard, Suite 4, Youngstown, OH 44512, on May 14, 2015.

So Certified,

/s/ Ralph M. Rivera

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