

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
Appellee, : Case No. 2015-1309
-vs- : *Death Penalty Case*
SHAWN E. FORD, :
Appellant :

**ON APPEAL FROM THE SUMMIT COUNTY
COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO, CASE NO. CR 2013 04 1008**

**SHAWN FORD'S MOTION TO UNSEAL THE SEALED
PORTIONS OF THE RECORD ON APPEAL**

UNOPPOSED

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COMES Now the Appellant, Shawn E. Ford, through undersigned counsel, and moves this Honorable Court for an Order to unseal proceedings that took place in the Common Pleas Court of Summit County, Case No. CR 2013 04 1008, which the trial court ordered to be sealed, and to be made a part of the record in Ford's criminal case. The reasons for this request are set forth in the attached memorandum.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION TO UNSEAL

Appellant, Shawn Ford, was convicted of aggravated murder and sentenced to death. He is currently before this Court on an appeal as of right. His brief is due on September 6, 2016.

On March 8, 2016, the Summit County Clerk of Courts submitted to this Court the record from Ford's capital trial. Along with the submitted record were the following items that were filed under seal:

- Doc. # 233-Deposition of Dr. Dorothy Dean, filed under seal
- Doc. # 311 (10/22/14) Incomplete form utilized by jurors to seating two alternate jurors on 10/21/14 to be filed under seal.
- Doc. #395 (7/10/15) State's Exhibit 1, Report of Arcangela S. Wood, Psy.D
- Doc. # 396 . (7/10/15) Defendant's exhibit A: report of Robert L. Byrnes, Ph.D.
- Doc. # 674 One sealed envelope containing Jury Questions
- Doc. ## 689-708: these documents are in a separate box, all dated 7/31/15 relating to a hearing pursuant to Atkins v. Virginia, and unavailable to counsel for viewing:
- Doc. # 689. State's exhibit SA-1: Report by Sylvia O'Bradovich, Psy.D. 6/9/15
- Doc. #690. State's exhibit SA-2: CV of Sylvia O'Bradovich
- Doc. #691. Defense exhibit A-1: CV of James J. Karpawich, Ph.D. 6/12/15
- Doc. #692. Defense exhibit A-2: Psychological evaluation by Karpawich
- Doc. # 693. Court exhibit CA-1: CV of Katie E. Connell, Ph.D., ABPP
- Doc. # 694. Court exhibit CA-2: Intellectual disability evaluation by Connell 4/26/15

- Doc. # 695. Court exhibit CA-3: Sealed box of record produced by Connell (part 1)
- Doc. # 696. Court exhibit CA-3: Sealed box of records produced by Connell (part 2)
- Doc. # 697. Court exhibit CA-3: Sealed box of records produced by Connell (part 3)
- Doc. # 698. Court exhibit CA-3: Sealed box of records produced by Connell (part 4)
- Doc. # 699. Court exhibit CA-3: Sealed box of records produced by Connell (part 5)
- Doc. # 700. Court exhibit CA-3: Sealed box of records produced by Connell (part 6)
- Doc. # 701. Court exhibit CA-3: Sealed box of records produced by Connell (part 7)
- Doc. # 702. Court exhibit CA-4: Sealed box of records by Connell (part 1)
- Doc. # 703. Court exhibit CA-4: Sealed box of records by Connell (part 2)
- Doc. # 704. Court exhibit CA-4: Sealed box of records by Connell (part 3)
- Doc. # 705. Court exhibit CA-4: Sealed box of records by Connell (part 4)
- Doc. # 706. Court exhibit CA-4: Sealed box of records by Connell (part 5)
- Doc. # 707. Court exhibit CA-4: Sealed box of records by Connell (part 6)
- Doc. # 708. Court exhibit CA-4: Sealed box of records by Connell (part 7)

Ford moves this Court to unseal these documents for appellate and post-conviction counsel's review, and to allow counsel, including counsel from the Ohio Public Defender's Office who are working on Ford's post -conviction petition, to view and to copy the contents.

Ford has a right to a complete and unabridged record for his capital appeal. See, *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 (1993). Further, Sup. R. Prac R. 11.03 makes it clear that the record on appeal in a death penalty case shall include everything related to the case in the trial court except the trial court physical exhibits.

The trial court's direction that these items be sealed as a part of the record in Ford's aggravated murder case demonstrates the court's express belief that these proceedings were directly relevant to his capital case. In sealing the reports relating to the competency and sanity evaluations, the trial court stated: "The Court is going to keep those records under seal *at this point in time.*" (10-28-13 Pretrial, Pg: 45, emphasis added). Later, defense counsel states: ". . . we would ask that it be kept under seal and that it contains information which we feel would not be appropriate *to be in the public record as of this time.* (Id., at p. 12) Pursuant to Sup. R. Prac. R. 11.03(B), these materials are documents that will be material to Ford's appeal.

The Court sealed the jury questions from the jury's deliberations. Two jurors were removed from the trial jury during the trial phase of the case, these questions could be pertinent to issues related to their removal.

There was also an issue raised during the course of the trial proceedings that Mr. Ford was intellectually disabled. To make a determination, there were three evaluations of Mr. Ford and a great deal of records related to these proceedings. During the *Atkins* hearing the following ensued:

Q. And have you gathered together the records that you considered in some boxes that are here today in the courtroom?

A. Yes. They are sitting next to me on my right.

Q. And did you have an opportunity before you came on the record today to look into those boxes to satisfy yourself that they still contain all of the records that you gathered and rely upon?

A. Yes, I did.

THE COURT: Counsel, if you wish to examine those boxes, you certainly may. But I would like the record to reflect that these boxes are the ones that the Court received from Dr. Connell and directed that duplicate copies be made of the contents of the boxes. One set was given to each side of the case, and the Court's intention was that each of the three experts would have the same body of original materials to examine in preparing their work.

It is the Court's intention to have these boxes sealed and marked as exhibits so that the record will contain everything upon which Dr. Connell based her work and by definition that the other experts also relied upon.

Do you wish to examine the boxes?

MR. HICKS: It's not necessary, Judge.

MR. LOPRINZI: No, Judge. We're satisfied that the documents that this doctor -- that Dr. Connell have examined we were provided exact duplicates for our experts to also examine.

THE COURT: Based on those indications, I'll instruct the bailiff to seal up the two boxes, and then I'll have

them marked as Court's Exhibits CA-3 and CA-4.
(The bailiff complied.)

THE COURT: The record should reflect that the boxes
have now been sealed and marked as exhibits.

(6-22-15, Atkins Hearing, p. 152)

The trial court's determination concerning whether Mr. Ford is
intellectually disabled will be challenged on appeal.

There is nothing in the record to indicate that these records should be
sealed and kept from appellate counsel or post-conviction counsel. In fact,
the court refers to sealing "as part of the appellate record" or "for appellate
review". These sealed portions of the record are pertinent to issues for
Ford's Merit Brief and Post-Conviction Petition. It is incumbent upon
counsel to review the items, as a thorough review of the entire record is
necessary to afford Ford a full and fair opportunity to litigate his appeal as of
right in this Court and to raise constitutional matters partially or wholly
supported *dehors* the record in the Common Pleas Court of Summit County.
Without a complete record for review, counsel cannot provide effective
representation to Ford. See, *State v. Buell*, 70 Ohio St.3d 1211, 639 N.E.2d
110 (1994); and, *Evitts v. Lucey*, 469 U.S. 387, 105 S. Ct. 830, 83 L.Ed.2d
821 (1985).

Undersigned counsel has contacted opposing counsel and he does not
oppose this motion. Counsel for the State would likewise seek review of the

sealed documents. Counsel for Mr. Ford does not oppose this request, since the State's Appellate Counsel will need access to respond to the issues raised by Mr. Ford's counsel.

Counsel is *not* requesting that these documents be made public records, only that appellate and post-conviction counsel for the defense and the state have access to the documents.

WHEREFORE, Appellant Ford requests that this Court unseal (allowing access to appellate and post-conviction counsel for the defense and the state) portions of the record that were held under seal by the Summit County Clerk's office and so filed in this Court. Since both counsel for Mr. Ford live outside of the Columbus area, Counsel has arranged with the Office of the Ohio Public Defender to make copies of the unsealed records for review by appellate counsel. In addition, counsel for the State also requests that the order regarding the unsealing be applicable to him as appellate counsel for the State.

Respectfully submitted,

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Counsel for Appellant,
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically on August 9, 2016 and that Richard S. Kasay, Assistant Prosecuting Attorney, was served electronically, with prior permission, through e-mail at kasay@prosecutor.summitoh.net.

/s/ Kathleen McGarry
Kathleen McGarry
Counsel for Shawn E. Ford