

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,)	
)	Warrant Nos. _____
v.)	
)	Murder; Criminal Attempt to Commit False
WILLIAM RODERICK BRYAN,)	Imprisonment
Defendant.)	

**MOTION FOR AN ORDER REQUIRING THE DISTRICT ATTORNEY
TO RESPOND IN WRITING TO EACH MOTION
WHICH IS CONTESTED BY THE STATE**

COMES NOW Defendant William Roderick "Roddie" Bryan, by and through undersigned counsel, and respectfully moves this Court, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, § I, ¶¶ I, II, IV, V, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XVIII, XXIV and XXVIII of the Constitution of the State of Georgia, international law, as well as statutory and jurisprudential authorities cited below, and all other applicable constitutional, statutory, treaty, customary international law, evolving international standards, and jurisprudential authority for an order directing the District Attorney to respond in writing to each motion filed by counsel for Defendant, William Roderick "Roddie" Bryan, which is to be contested by the State. In support of this motion, counsel states:

1.

Defendant, Roddie Bryan is charged with murder. The State, through the District Attorney Pro Tempore, has yet to announce its intentions with respect to whether to seek to kill Defendant, Roddie Bryan, a human being, by lethal injection.

2.

The United States Supreme Court has repeatedly emphasized that because of the exceptional and irrevocable nature of the death penalty, "extraordinary measures" are required by the Eighth and

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June 18, 2020
Maebra Houghton
 Clerk, Superior Court, Glynn County, Georgia

Fourteenth Amendments to ensure the reliability of decisions regarding both guilt and punishment in a capital trial. Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring). See also Monge v. California, 524 U.S. 721, 732 (1998); Johnson v. Mississippi, 486 U.S. 578, 584 (1988); Ford v. Wainwright 477 U.S. 399, 411 (1986); Spaziano v. Florida, 468 U.S. 447, 456 (1984); Strickland v. Washington, 466 U.S. 668, 704 (1984); California v. Ramos 463 U.S. 992, 998-99 (1983); Estelle v. Smith, 451 U.S. 454, 463 (1981); Beck v. Alabama, 447 U.S. 625, 637-38 (1980); Lockett v. Ohio, 438 U.S. 586, 604 (1978); Gardner v. Florida, 430 U.S. 349, 357-58 (1977); Woodson v. North Carolina, 428 U.S. 280, 305 (1976); and Gregg v. Georgia, 428 U.S. 153, 187 (1976).

3.

A motion is a request of the Court for a specific form of relief. Virtually every jurisdiction recognizes the use of the motion to address issues relevant to either the prosecution or defense of a criminal case. Several reasons exist for requiring the prosecution to respond in writing to each motion filed by the defense, and to require that the prosecution cite the authorities on which they rely.

4.

Judicial Economy: First, there are considerations of judicial economy. There are many motions which will require evidentiary hearings. Should the State concede that the motion should be granted, much time will be saved, and the County will not bear the expense of witnesses who would otherwise be required to testify on the motion. Requiring the disputed issues in this case to be reduced to writing would focus the respective positions of the defense and the prosecution, thus enabling this Court to more easily and accurately rule on those issues. In addition, the State's

response to each motion will also provide this Court with additional authority, putting the Court in a better position to decide the issues.

5.

In civil actions, one party is uniformly required to respond in writing to the pleadings filed by the other party. It would be very odd to suggest that a rule which applies where a few thousand dollars or a widget are at stake should not apply where a life is at stake.

6.

Notice to the defense: Additionally, Defendant, Roddie Bryan has a right to notice as to the State's position regarding the issues in the case. See Lankford v. Idaho, 500 U.S. 110 (1991). Counsel for Defendant, Roddie Bryan cannot prepare for hearings unless the defense knows what position the prosecution is going to take with respect to the issues raised in defense pleadings.

7.

Unless the State is required to respond in writing to the issues raised by Defendant, Roddie Bryan's counsel through the defense motions, defense counsel will not know what the State's responses will be -- if any, until the oral argument at the motions hearing. Surely the mandates set forth in the Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States and the mandates enumerated in Article I, § I, ¶ XIV of the Constitution of the State of Georgia require more.

8.

Procedural Default: For years, the prosecuting attorneys have urged upon the appellate courts various procedural defaults, in an effort to assure the execution of indigent defendants whose lawyers have failed to preserve their rights. It is clear, at this point in the development of the law, that procedural rules must be a two-way street: "What's sauce for the goose is sauce for the gander."

Alcerte v. McGinnis, 898 F.2d 69, 72 (7th Cir. 1990). “[T]he Due Process Clause . . . forbids enforcement of . . . rules unless reciprocal rights are given to criminal defendants.” Wardius v. Oregon, 412 U.S. 470, 472 (1973). For this reason, procedural rules have been applied with equal force against the prosecution as against the defense. See, e.g., Wilson v. O’Leary, 895 F.2d 378, 384 (7th Cir. 1990); Alcerte v. McGinnis, 898 F.2d at 71-72; Russell v. Rolfs, 893 F.2d 1033, 1038 (9th Cir. 1990); Francis v. Rison, 894 F.2d 353, 355 (9th Cir. 1990); Cole v. Young, 817 F.2d 412, 415 (7th Cir. 1987); Merlo v. Bolden, 801 F.2d 252, 255 (6th Cir. 1986); Barrera v. Young, 794 F.2d 1264, 1267-68 (7th Cir. 1986); Boykins v. Wainwright, 737 F.2d 1539, 1545 (11th Cir. 1984); see also Hitchcock v. Dugger, 481 U.S. 393, 399 (1987) (waiver of harmless error by failing to raise it).

9.

Therefore, unless the prosecution attorneys announce what their position is, and why, they will be defaulted from arguing varying positions on any appeal. This is only fair – when the accused loses by default, he or she dies; when the prosecution loses by default, the State may still get to keep Defendant, Roddie Bryan in prison under a life sentence without the possibility of parole.

10.

Citation of Authority: Courts require parties to “support propositions of law with reasons and authorities.” Pate v. State, 419 So.2d 1324, 1325-26 (Miss. 1982). This not only ensures notice and fairness to the opposing party, but protects the Court from being misled into committing errors of law, especially reversible ones. The State must also provide authority in this case. Therefore, unless the prosecution cites authority in responses, this Court should rule that the prosecution waived their opportunity to argue to the Court that the motion should not be granted:

11.

[The] rules apply to the government as well as to defendants. [The State] has forfeited what would have been its best argument. If as a result a violent offender goes free, the [state prosecutor] must understand where the responsibility lies – with his own staff.

Wilson v. O’Lcary, 895 F.2d at 384; accord Alerte v. McGinnis, 898 F.2d at 72 (“the state has only itself to blame for the defect that has undone this appeal”).¹ Only in this way will the Court be able to assure itself that it is not committing legal errors.

12.

Court Rules and the Uniform Appeal: The Uniform Rules for Superior Courts were formulated in accordance with the directive of Article VI, § IX, ¶ 1 of the Constitution of the State of Georgia of 1983. Rule 31 of the Uniform Rules for Superior Courts is entitled "Motions, Demurrers, Special Pleas, and Similar Items in Criminal Matters." U.S.C.R. Rule 31.1 requires that a defendant in a criminal case file all motions at or before arraignment, unless the time for filing such motions is extended by the trial judge in writing.

13.

The revised Unified Appeal which prescribes the procedures by which death penalty cases are to be administered by the trial court provides that one of the purposes of the Unified Appeal "Outline of Proceedings" is “before, during and after trial, . . . [i]nsuring that all legal issues which

¹Obviously there is sometimes no authority for a specific proposition, in which case the parties must analogize. Additionally, precedent is frequently overruled, so the presence of seemingly “dispositive” precedent is not actually dispositive of any issue. Finally, it may appear that new issues arise when evidence is adduced at a hearing. Clearly, the parties are not barred from arguing – and, if necessary or ordered by the Court, briefing – such issues.

ought to be raised on behalf of the defendant have been considered by the defendant and defense counsel and asserted in a timely and correct manner." U.S.C.R. Rule 34(D)(A)(1).

14.

The Uniform Rules for Superior Courts mandate that the responsibility for both raising issues and waiving issues is on the defendant. Primarily, issues are raised by motions. It is patently unfair to require the defendant to either raise an issue in writing or waive it and *not* to require a written response from the State whenever the State contests a particular issue.

15.

Rule 6 of the Uniform Superior Court Rules, "Motions in Civil Actions," provides that "every motion made prior to trial, except those consented to by all parties, when filed shall include or be accompanied by citations of supporting authorities." U.S.C.R. 6.1.

16.

Uniform Superior Court Rule 6.2 provides that,

"[u]nless otherwise ordered by the judge, each party opposing a motion shall serve and file a response, reply memorandum, affidavits, or other responsive material not later than 30 days after service of the motion."

(emphasis added).

17.

The Prosecutor's Ethical Duty: A prosecutor has a duty to uphold the dignity of the court and respect its authority, as well as maintain public confidence in the judicial system and the legal profession. United States v. Alabama, 571 F.Supp. 958 (N.D. Ala. 1983); American Bar

Association, Standards of Criminal Justice §3-1.2(b); Adams v. State, 198 So. 2d 255 (Ala. 1967) (the primary duty of the office of the District Attorney is to see that justice is done).

18.

The role of the public prosecutor has long been recognized as a special one:

The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during the trial, the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefits of all reasonable doubts.

Georgia Code of Professional Responsibility, EC 7-13; see also, Burns v. State, 172 Ga.App. 645, 324 S.E.2d 197 (1984); American Bar Association, Standards, 3-1.2(c) (prosecutor has responsibility to guard the rights of the accused as well as those of society at large); American Bar Association, Annotated Model Rules of Professional Conduct, Rule 3.8 comment [1]; O.C.G.A. § 15-18-2 (oath requiring district attorney to discharge duties faithfully and impartially).

19.

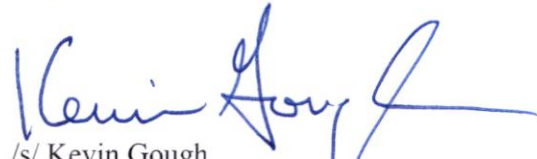
The District Attorney and his or her assistants have an obligation to respond to each defense motion if the State intends to oppose the relief requested therein. To wait until the motions hearings and then orally respond fails to satisfy the obligations placed upon the prosecutor to actively address Defendant, Roddie Bryan's appeals for relief from violations of his constitutional rights. If the State has a legitimate interest in objecting to a particular motion, then the prosecutor should set forth his opposition to those requests in such a timely manner that the defense may be prepared to respond to the State's argument and cited authority.

-7-

WHEREFORE, for the foregoing reasons and any others that may appear to this Court after a hearing, counsel for Defendant, Roddie Bryan, respectfully requests this Court issue an order directing the District Attorney to respond in writing, within a reasonable period of time, to all motions filed by the defense which the State contests; and grant such other relief which is consistent with the requests set forth herein.

WHEREFORE, Defendant prays that the Court grant the relief requested herein.

So moved, this 18th day of June, 2020.

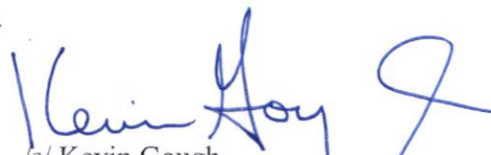

/s/ Kevin Gough
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CERTIFICATE OF SERVICE

COMES NOW Kevin Gough, attorney for the defendant, and hereby certifies that a copy of the foregoing document(s) have been served upon the District Attorney by email delivery this date.

So moved, this 18th day of June, 2020.


/s/ Kevin Gough

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