

*Ronald M Adams*  
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA :  
 :  
v. : INDICTMENT NO.  
 : CR-2000433  
TRAVIS MCMICHAEL :  
 :  
GREGORY MCMICHAEL, :  
 :  
Defendants. :  
 :

**4.6**  
**MOTION FOR DEFENDANTS TO BE PRESENT**  
**IN THE COURTROOM**

Defendants TRAVIS MCMICHAEL and GREGORY MCMICHAEL hereby move to be present in the courtroom at each and every further stage of the proceedings in this case pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, article 1, § 1, ¶¶ I, II, III, IV, V, VII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XXIV, XXV, and XXIX of the Constitution of the State of Georgia, and applicable statutory provisions. Defendants, through undersigned counsel, move for an order from this Court, requiring their presence in the courtroom at each and every proceeding related to this case. In support of this Motion, counsel shows this Court the following:

1.

When the State charges a person with a crime, the Fifth, Sixth, and Fourteenth Amendments entitle the defendant to a fair and impartial trial.

*Duncan v. Louisiana*, 391 U.S. 145, 158 (1968); *Turpin v. Todd*, 271 Ga. 386, 389 (1999). This state has recognized that the right to a fair and impartial trial requires that the accused is present when action is taken that may materially affect his case. *Turpin v. Todd*, 271 Ga. 386, 389 (1999); *Morris v. State*, 257 Ga. 781, 784 (1988); *Hopson v. State*, 116 Ga. 90 (1902).

2.

As the Court of Appeals held in *Pierce v. State*, 47 Ga. App. 830 (1933):

We think that the right to be present at all stages of the trial ranks among the defendant's most substantial rights. It ranks next in importance to, if not on par with, his right to be presumed to be innocent until proved guilty.... 'The presence of counsel was no substitute for that of the man on trial. Both should have been present.'

47 Ga. App. at 831 (quoting *Wilson v. State*, 87 Ga. 583 (1891)). This right of a defendant in a criminal case to be present at all proceedings is a right that has long been recognized by the courts in this state. In *Plain v. State*, 60 Ga. 284, 288 (1878), the Georgia Supreme Court stated:

For fear of misapprehension, we will add, that it is not a safe practice to take action in a criminal case without the accused and his counsel are both present. Even when a benefit is intended, the effect may not be altogether beneficent; and no other eyes are so keen in discerning possible detriment, as those of the man who is to undergo punishment and the counsel who bears upon his conscience the weight of his client's case.

3.

The right to be present has long been recognized in the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States. With respect to the right to counsel, the United States Supreme Court has noted that the constitutional provision grants the right to the "Assistance of Counsel." U.S. Const. amend. VI; see also *Gideon v. Wainwright*. 372 U.S. 335 (1963). "The counsel provision ... speaks of the 'assistance' of counsel, and an assistant, however expert, is still an assistant. The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment shall be an aid to a willing defendant...." *Faretta v. California*, 422 U.S. 806, 820 (1975) (emphasis added), see also *Burney v. State*, 244 Ga. 33, 36, 257 S.E. 2d 543 (1979) (emphasizing the defendant's right under Art. 1, § 1, ¶ XII of the Constitution of the State of Georgia to actively participate in the trial). The defendants' right to

assistance of counsel cannot be fully effectuated unless the defendant is present at the proceedings, alongside his attorneys.

4.

In addition to underscoring the advisory role of counsel, the courts have stressed the importance of the defendant's taking an active role in his defense. Over a century ago, the Supreme Court acknowledged that the defendant's presence was a "substantial right" because "[t]he necessities of the defense may not be met by the presence of his counsel only." *Hopt v. Utah*, 110 U.S. 574, 578 (1884). By 1912, the Court held that the defendant "is entitle[d]... to be present at all ... stages of the proceedings." *Diaz v. United States*, 223 U.S. 442, 454 (1912); accord *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934) (assuming that "in a prosecution for a felony the defendant has the privilege under the Fourteenth Amendment to be present in his own person"); *Faretta v. California*, 422 U.S. 806, 819-20 ("The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails").

5.

The *Snyder* Court provided the basic rationale which underlies the accused's right to be present: Only then "will [it] be in his power ... to give

advice or suggestion ...” 291 U.S. at 106; accord *Faretta v. California*, 422 U.S. at 816.

6.

The right to consult and work with the attorney finds its roots in the Sixth Amendment right to counsel. However, the right to be present also derives from the explicit constitutional right to personally confront witnesses. *Faretta v. California*, 422 U.S. at 816. “[A]lthough many of the modern cases involving the constitutional right to presence are rooted in the Confrontation Clause of the Sixth Amendment, the right is also ‘protected by the Due Process Clause in some situations where the defendant is not actually confronting witnesses or evidence against him.’” *United States v. Gordon*, 829 F.2d at 123 (quoting *United States v. Gagnon*, 470 U.S. 522, 526 (1985)).

7.

To deny Defendants the right to be present in the courtroom at any stage of the proceedings and to personally see and know what is being done in the case would violate article 1, § 1, ¶ XII of the Constitution of the State of Georgia. The Georgia Supreme Court has held that

[t]he accused and his counsel have the right to be present at every stage of the proceedings and personally see and know what is being done in the case. To say that no injury results when it appears that what occurred in their absence was regular and legal would, in effect, practically do away with this great and important right, one element of which is to see to it that what does take place is in accord with law and good practice.

*Perry v. State*, 216 Ga. App. 749, 750 (1995) (quoting *Wilson v. State*, 212 Ga. 73, 74-75 (1955)).

8.

Defendants Travis and Gregory McMichael seek to avail themselves of the rights afforded to all accused citizens: the right to be present in the courtroom when any action is considered that affects their rights, so that they can personally see and confront the witnesses the State brings and to offer aid and assistance to their counsel, in furtherance of their defense.

THEREFORE, Travis and Gregory McMichael hereby advise the Court of their intent and desire to be present in the courtroom with their attorneys at any future court proceedings and respectfully move this Court to enter an Order requiring that all necessary arrangements are made to assure their presence in the courtroom.

Dated this 15<sup>th</sup> day of April, 2021.

*Franklin J. Hogue*

FRANKLIN J. HOGUE  
Attorney for Defendant  
State Bar Number 360030  
Hogue Hogue Fitzgerald & Griffin, LLP  
341 Third Street  
P.O. Box 1795  
Macon, GA 31202-1795  
478-750-8040  
frank@hogueandhogue.com

*Laura D. Hogue*

LAURA D. HOGUE  
Attorney for Defendant  
State Bar Number 786090  
Hogue Hogue Fitzgerald & Griffin, LLP  
341 Third Street  
P.O. Box 1795  
Macon, GA 31202-1795  
478-750-8040  
laura@hogueandhogue.com

*Robert Rubin/w.e.p.l.d.h.*

ROBERT G. RUBIN  
Attorney for Defendant  
State Bar Number 618635  
Peters, Rubin, Sheffield & Hodges  
2786 North Decatur Road  
Suite 245  
Decatur, GA 30033  
404-296-5300  
robertrubin@justiceingeorgia.com

*Jason Sheffield/w.e.p.l.d.h.*

JASON B. SHEFFIELD  
Attorney for Defendant  
State Bar Number 639719  
Peters, Rubin, Sheffield & Hodges  
2786 North Decatur Road  
Suite 245  
Decatur, GA 30033  
404-296-5300  
jasonsheffieldattorney@gmail.com

**Certificate of Service**

I hereby certify by my signature that I have served a copy of 4.6 Motion for Client to be Present on the Office of the District Attorney for the Cobb Judicial Circuit by delivering it to District Attorney Flynn D. Broady, Jr., by emailing it to:

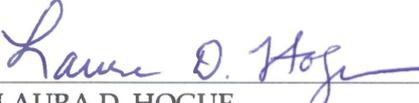
Jesse Evans  
Cobb County District Attorney's Office  
70 Haynes Street  
Marietta, GA 30090  
[Jesse.evans@cobbcounty.org](mailto:Jesse.evans@cobbcounty.org)

Linda Dunikoski  
Cobb County District Attorney's Office  
70 Haynes Street  
Marietta, GA 30090  
[Linda.dunikoski@cobbcounty.org](mailto:Linda.dunikoski@cobbcounty.org)

Courtesy copy:

Kevin Gough  
Attorney for William R. Bryan  
501 Gloucester Street, Suite 121  
P.O. Box 898  
Brunswick, GA 31521  
[Kevingough.firm@gmail.com](mailto:Kevingough.firm@gmail.com)

April 15, 2021.

  
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LAURA D. HOGUE