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OCT 16 2006
BY:

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Ben Cohen
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New Orleans, Louisiana 70113

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PHONE: (504) 368-1020

STEPHEN T. WINBERLY
FIRST ASSISTANT
DISTRICT ATTORNEY

October 13, 2006

Jelpi P. Picou, Jr.
Ben Cohen
The Capital Appeals Project
636 Baronne Street
New Orleans, Louisiana 70113

RE: *State v. Patrick Kennedy*
No. 05-KA-1981

Dear Counselors:

Enclosed please find a copy of the State's *Motion for Extension of Time and Motion to Supplement the Record* in the above referenced case.

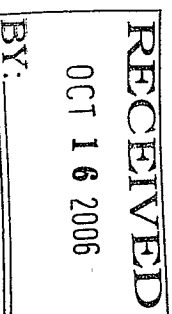
Sincerely,



Juliet Clark
Assistant District Attorney

JLC

Enclosure



SUPREME COURT
LOUISIANA
2006 OCT 13 PM 12:34
K.C.
CLERK
OF COURT

IN THE
SUPREME COURT

STATE OF LOUISIANA

NO. 05-KA-1981

STATE OF LOUISIANA,

APPELLEE

Versus

PATRICK KENNEDY,
APPELLANT

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT FOR THE
PARISH OF JEFFERSON, STATE OF LOUISIANA, NO. 98-1425 DIVISION "O", HON.
ROSS LADART, JUDGE PRESIDING

CAPITAL CASE

MOTION FOR EXTENSION OF TIME TO FILE STATE'S BRIEF

MAY IT PLEASE THE COURT:

NOW INTO COURT comes the State of Louisiana, appellee, through the undersigned

Assistant District Attorney and respectfully requests a final extension of twenty days in which to file
its brief as follows:

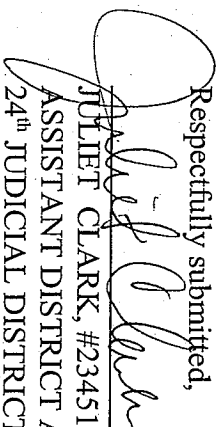
- 1.) This is a direct appeal to this Court from a conviction of capital aggravated rape and a sentence of death.
- 2.) The State's brief as appellee is currently due on October 16, 2006. This is undersigned counsel's third request for an extension of time to file its brief in this matter.
- 3.) Since the State requested its last extension of time, the attempt to resolve an issue involving an error in the transcript of the jury selection in this case has forced undersigned counsel to divert essential time from the completion of its brief. Counsel has this date filed a motion to supplement the record with the court reporter's corrections to the transcript in this respect.
- 4.) Undersigned counsel would note that the record in this matter consists of a total of twenty-six volumes and is over 6,000 pages. Additionally, undersigned counsel must respond not only to the original, eighty-five page brief filed by the Louisiana Capital Appeals Project, which presents sixty-nine assignments of error briefed in twenty arguments with numerous sub-parts, but also a nineteen page supplemental brief filed by pro-bono counsel which specifically addresses the constitutionality of La. R.S. 14:42(D)(2)(a) and La. C.Cr.P. art. 905.4.

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BY: _____

- 5.) Undersigned counsel contacted opposing counsel, Jelpi Picou, Jr., who stated that he has no opposition to this motion.

WHEREFORE, the State of Louisiana prays that it be granted a final extension of 20 days from the current due date in which to file its brief in this matter.

Respectfully submitted,



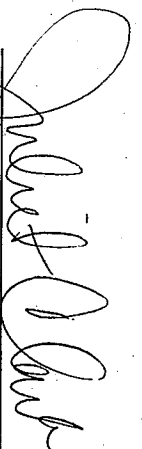
JULIET CLARK, #23451
ASSISTANT DISTRICT ATTORNEY
24th JUDICIAL DISTRICT
PARISH OF JEFFERSON
200 DERBIGNY STREET
GRETNA, LOUISIANA 70053
(504) 368-1020

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing motion for extension of time upon opposing counsel, by placing a copy of the same in the United States Mail, this the 13th day of October, 2006, postage prepaid and properly addressed to:

Jelpi Picou, Jr. #18746
G. Benjamin Cohen
The Capital Appeals Project
636 Baronne Street
New Orleans, Louisiana 70113
(504) 529-5955

Martin A. Stern #17154
Adams and Reese, LLP
4500 One Shell Square
New Orleans, Louisiana 70139
(504) 581-3234



JULIET CLARK, #23451
ASSISTANT DISTRICT ATTORNEY
24th JUDICIAL DISTRICT
PARISH OF JEFFERSON
200 DERBIGNY STREET
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(504) 368-1020

IN THE
SUPREME COURT

STATE OF LOUISIANA

NO. 05-KA-1981

STATE OF LOUISIANA,
APPELLEE

Versus

PATRICK KENNEDY,
APPELLANT

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT FOR THE
PARISH OF JEFFERSON, STATE OF LOUISIANA, NO. 98-1425 DIVISION "O", HON.
ROSS LADART, JUDGE PRESIDING

CAPITAL CASE

MOTION FOR EXTENSION OF TIME

ORDER

IT IS HEREBY ORDERED that the State of Louisiana, through the Office of the District Attorney for the 24th Judicial District, Parish of Jefferson, be granted a final 20 day extension of time to file the State's brief in this matter, or until Monday, November 6, 2006.

JUSTICE, LOUISIANA SUPREME COURT

This __ day of _____, 2006.
New Orleans, Louisiana.

SUPREME COURT
LOUISIANA

2006 OCT 13 PM 12:34

KL
CLERK
OF COURT

IN THE
SUPREME COURT

STATE OF LOUISIANA

NO. 05-KA-1981

STATE OF LOUISIANA,
APPELLEE

Versus

PATRICK KENNEDY,
APPELLANT

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT FOR THE
PARISH OF JEFFERSON, STATE OF LOUISIANA, NO. 98-1425 DIVISION "O", HON.
ROSS LADART, JUDGE PRESIDING

CAPITAL CASE

MOTION TO SUPPLEMENT THE RECORD

MAY IT PLEASE THE COURT:

NOW INTO COURT comes the State of Louisiana, appellee, through the undersigned

Assistant District Attorney and respectfully requests this Honorable Court order the 24th Judicial

District Court for the Parish of Jefferson to supplement the record with the court reporter's

corrections to the transcript of August 14, 2003, in this matter as follows:

- 1.) As noted in the defendant's original brief, there is a discrepancy between the minute entry of August 14, 2003 (R. p. 62), and the transcript of that date with respect to the party striking prospective juror Clothilde Sheehan (R. p. 4187-4188). (Brief of Appellant, p. 75-76). The State would also note that although the minute entry of August 14, 2003 reflects that the defendant excused prospective juror Frank Pellagel, the transcript of that date did not reflect that either party moved to excuse him.
- 2.) After being advised of these discrepancies, the court reporter reviewed the notes and the tapes from the date in questioned, and discovered that she had made errors in the transcription of the proceedings on that date.
- 3.) Attached is the affidavit of Martha Duley, Certified Court Reporter, reflecting that she made errors in preparing pages 351-353 of the transcript of August 14, 2003. The corrected versions of those pages are also attached. Specifically, a comparison of the transcript of August 14, 2003 contained within the record, with the corrected pages attached reflects that Assistant District Attorney Vincent Paciera's use of a peremptory challenge to excuse Ms. Sheehan was incorrectly attributed to defense counsel Mark Armato in the original transcript. The attached pages also reflect the defendant's use of a peremptory challenge to excuse Mr. Frank Pellagel, an occurrence which is not reflected in the original transcript.

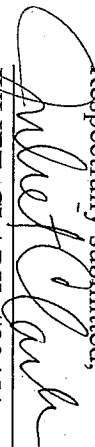
RECEIVED

OCT 16 2006

BY: _____

WHEREFORE, the State of Louisiana prays this Honorable Court to issue an order to the Clerk of the 24th Judicial District Court ordering that the record in this matter be supplemented with Certified Court Reporter Martha Duley's corrections to the transcript of August 14, 2003, in this matter.

Respectfully submitted,



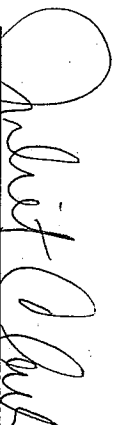
JULIET CLARK, #23451
ASSISTANT DISTRICT ATTORNEY
24th JUDICIAL DISTRICT
PARISH OF JEFFERSON
200 DERBIGNY STREET
GRETNNA, LOUISIANA 70053
(504) 368-1020

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing motion to supplement the record upon opposing counsel, by placing a copy of the same in the United States Mail, this the 13th day of October, 2006, postage prepaid and properly addressed to:

Jelpi Picou, Jr. #18746
G. Benjamin Cohen
The Capital Appeals Project
636 Baronne Street
New Orleans, Louisiana 70113
(504) 529-5955

Martin A. Stern #17154
Adams and Reese, LLP
4500 One Shell Square
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JULIET CLARK, #23451
ASSISTANT DISTRICT ATTORNEY
24th JUDICIAL DISTRICT
PARISH OF JEFFERSON
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GRETNNA, LOUISIANA 70053
(504) 368-1020

IN THE
SUPREME COURT

STATE OF LOUISIANA

NO. 05-KA-1981

STATE OF LOUISIANA,
Appellee

Versus

PATRICK KENNEDY,
Appellant

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT FOR THE
PARISH OF JEFFERSON, STATE OF LOUISIANA, NO. 98-1425 DIVISION "O", HON.
ROSS LADART, JUDGE PRESIDING

CAPITAL CASE

MOTION TO SUPPLEMENT THE RECORD

ORDER

IT IS HEREBY ORDERED that the Clerk of Court for the Twenty-fourth Judicial District,
Parish of Jefferson, supplement the record in this matter with Certified Court Reporter Martha
Duley's corrections to the transcript of August 14, 2003.

JUSTICE, LOUISIANA SUPREME COURT

This ___ day of _____, 2006.
New Orleans, Louisiana.

Martha Duley
(504) 341-2623 (H)
(504) 650-0279 (C)
(504) 364-3895 (O)

October 11, 2006

RE: Patrick Kennedy
NO. 98-1425
Division "O"
August 14, 2003

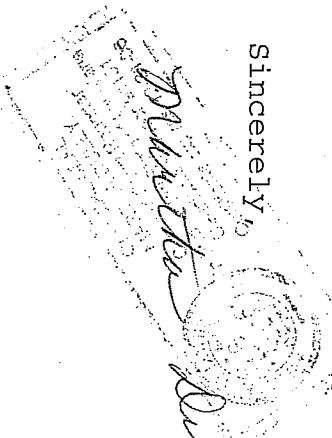
TO WHOM IT MAY CONCERN:

In reference to the above captioned case, I, Martha Duley, am enclosing copies of three pages from the August 14, 2003 transcript that I made typographical errors on; pages 351, 352, and 353.

If you have any questions about them, please call me at one of the numbers above.

Sincerely,


Martha Duley



1 strike Patricia Flynn.

2 THE COURT:
3 Patricia Flynn, 886. Now we're down
4 to ten.

5 As to Ms. Augustus?

6 MR. ARMATO:
7 We would accept her.

8 THE COURT:
9 You'll accept her. We're back to
10 eleven. Ms. Mari Marcus? Ms. Mari
11 Marcus, number 472? Do you take Ms.
12 Marcus?

13 MR. ROWAN:
14 Yes, sir.

15 THE COURT:
16 Did you take Ms. Marcus?

17 MR. ARMATO:
18 We're going to go back and cut Mr.
19 Pellagal.

20 THE COURT:
21 Okay. We're cutting Mr. Pellagal for
22 Ms. Marcus. How does the State feel about
23 Mr. Servat?

24 MR. PACIERA:
25 I'm sorry?

26 THE COURT:
27 Mr. Servat, is he acceptable?

28 MR. PACIERA:
29 Yes.

30 THE COURT:
31 We're at ten, is that right?

32 MR. PACIERA:

1 We're at --

2 THE COURT: Come on, let's see if we can focus
3 here.
4

5 MR. ROWAN: We are, Judge, it's just --
6

7 MR. PACIERA: I thought we had --
8

9 THE COURT: This game gets to be boring and be
10 absurd.
11

12 MR. PACIERA: But we do have eleven.
13

14 THE COURT: I want to count to be sure.
15

16 MR. PACIERA: Okay.
17

18 THE COURT: I want to count to be sure. From the
19 first panel, two, three, four, five, six,
20 seven.
21

22 From this panel we've got one, two,
23 three, four. That's eleven.
24

25 MR. PACIERA: Yes, sir.
26

27 THE COURT: Okay. Now, Mr. Servat is up, you want
28 him or you don't want him?
29

30 MR. PACIERA: We're going to go back and cut the
31 first juror, Ms. Sheehan.
32

THE COURT:

1 Ms. Sheehan. All right, ten.

2 MR. PACIERA:

3 And we will accept Mr. Servat.

4 THE COURT:

5 Servat, that puts us back at eleven.

6 All right.

7 MR. PACIERA:

8 I'm sorry, Judge, I apologize.

9 THE COURT:

10 We're at ten. Do you want Mr. Servat?

11 MR. ARMATO:

12 Yes.

13 THE COURT:

14 Okay. Jim, can you put down Ms.
15 Sheehan?

16 MR. PACIERA:

17 We won't take her, Judge, we'll excuse
18 Ms. Yochum.

19 THE COURT:

20 That brings you to six.

21 MR. PACIERA:

22 That's my count, yes.

23 THE COURT:

24 And the defense is at five?

25 MR. PACIERA:

26 I've got seven.

27 MR. ARMATO:

28 I've got seven.

29 MS. DAPONTE:

30 It's seven.

31 THE COURT:

32 You've got seven?