

IN THE DISTRICT COURT OF APPEAL  
THIRD DISTRICT OF FLORIDA

CASE NO. 3D08-510

SEAN CASEY, :

Appellant, :

v. :

STATE OF FLORIDA, :

Appellee. :

\_\_\_\_\_ /

**MOTION TO SUPPLEMENT  
THE RECORD ON APPEAL**

The Appellant, SEAN CASEY, through undersigned counsel, respectfully moves this Court to enter an Order to supplement the record on appeal in this case with a copy of the tape recording that is the subject of Arguments III and IV of his briefs and the transcripts thereof.

In support of his motion, Appellant Casey states as follows:

1. In Argument III of Appellant Casey's Initial Brief, he has argued that the trial court erred in refusing to admit a tape recording of a conversation with his trial counsel supporting his claim that his trial counsel advised him to flee. In the Appellee's Answer Brief, the Appellee has argued, *inter alia*, that

this tape recording does not show that Appellant Casey's trial counsel was committing a crime when the conversation was secretly recorded. Answer Brief at page 43 and footnote 3. This tape recording is presently in the custody of the State Attorney's Office. Undersigned counsel has a copy of the tape recording and the transcript thereof. In order for this Court to resolve this dispute, the record on appeal should be supplemented with the tape recording at issue and the transcript thereof.

2. In Argument IV of Appellant Casey's Initial Brief, he has argued that his trial counsel had a conflict of interest because his trial counsel advised him to flee. In the Appellee's Answer Brief, the Appellee has noted that this conflict of interest argument necessarily rests on the acceptance of the Appellant's claim that his trial counsel urged him to flee the jurisdiction. The Appellee has contended that the testimony of the Appellant and his mother regarding this claim is unworthy of belief. Answer Brief at \_\_\_\_\_. However, the tape recording of the Appellant's trial counsel that is the subject of Argument III and the tape recording of Dr. Rappaport, the psychiatrist who trial counsel brought into this case and who the Appellant and his mother testified advised him to flee with the knowledge of trial counsel, show that the testimony of the Appellant and his mother regarding this claim was truthful. The originals of

both of these tape recordings are in the custody of the State Attorney's Office and the official transcripts thereof are in the custody of undersigned counsel.

WHEREFORE, for all of the foregoing reasons and because the aim of our system of justice is to seek the truth and avoid a miscarriage of justice, it is respectfully requested that this Court enter an Order directing the State Attorney's Office to promptly supplement the record on appeal with the tape recordings of the Appellant's trial counsel and Dr. Rappaport that are the subject of Arguments III and IV of this Brief and directing that undersigned counsel promptly supplement the record on appeal with the transcripts of these tape recordings.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to Linda S. Katz, Assistant Attorney General, 444 Brickell Avenue, Suite 650, Miami, Florida 33131 on this \_\_\_\_ day of February 2009.

BY: \_\_\_\_\_

MARCIA J. SILVERS, ESQUIRE