

IN THE ALABAMA COURT OF CRIMINAL APPEALS

EX PARTE STATE OF ALABAMA)	
)	
IN RE:)	
STATE OF ALABAMA,)	
Petitioner,)	
)	
VS.)	CASE NO. CR04-0805
)	
GLENN E. THOMPSON,)	
CIRCUIT JUDGE, EIGHTH JUDICIAL)	
CIRCUIT,)	
Respondent.)	

RESPONSE OF CIRCUIT JUDGE GLENN E. THOMPSON

The State of Alabama has filed a Writ of Mandamus before the Court of Criminal Appeals asking that the undersigned Circuit Judge be disqualified from presiding over the retrial of Daniel Wade Moore. The State's Assistant Attorney General, Don Valeska, questions the integrity, honesty, and impartiality of the undersigned Circuit Judge. The undersigned considers these very serious allegations. Daniel Wade Moore was charged with the murder of Karen Tipton. A jury, selected in Morgan County, Alabama, tried and convicted Mr. Moore and recommended that he be sentenced to life imprisonment without parole. After weighing the aggravating and mitigating circumstances, the undersigned sentenced Mr. Moore to death, finding that once a jury said he committed this heinous crime, death was the only appropriate sentence.

Throughout the trial of the case, the defense counsel repeatedly requested that they be given access to material collected by the Decatur Police Department and submitted to the Federal Bureau of Investigation, as well as, any information provided by the Federal Bureau of Investigation to the Decatur Police Department. Knowing full well

that his representations to the Circuit Court of Morgan County, Alabama were untrue, Mr. Valeska repeatedly represented that no such material existed. It was only after Mr. Moore was tried, convicted, and sentenced that the truth became known. The truth being that Mr. Valeska had wrongfully withheld pertinent information from counsel for the Defendant and had lied to the Court about its very existence. After hearing on a Motion for New Trial, this Court granted Mr. Moore a new trial. While that ruling was on appeal, a Motion to Dismiss, which had been previously filed by the Defendant, was left in abeyance, pending a ruling from the Court of Criminal Appeals on Mr. Valeska's Writ of Mandamus trying to overturn the Court's order granting a new trial. After the Court of Criminal appeals affirmed the trial court's order for a new trial, a hearing was then held on the Defendant's Motion to Dismiss the case. This Court found that the actions of Assistant Attorney General, Valeska, representing the State of Alabama, were so egregious that the only appropriate remedy under the law and the facts was to dismiss the charges pending against the defendant. The undersigned Circuit Judge fully understands that the Court of Criminal Appeals overturned that dismissal and fully intends to comply with the higher Court's order. Trial for the Defendant has been set for July 30, 2007, and absent a ruling from this Court that the case cannot proceed, it is the intention of the undersigned to proceed with that trial setting.

In regard to the pending Writ of Mandamus, the undersigned denies making any inappropriate comments about this case in the presence of the jury or publicly. I deny making any findings that the State's case was insufficient. The orders I have entered speak for themselves. Furthermore, if the lead prosecutor had complied with the Court's orders of discovery and the applicable law regarding production of evidence in a Capital

Murder case, no new trial would have been required on those grounds. When this case is retried, a jury and the not undersigned will be the trier of facts. Please note also that there has been no evidentiary hearing on the State's Motion for Recusal. Therefore, there is no evidence before the Court other than the transcript of the trial, the Circuit Court's order granting a new trial which has been affirmed, and the Court's order dismissing the case, which ruling has been reversed. Everything else referred to in Mr. Valeska's petition is his unsubstantiated accusation and not evidence properly before the Court.

The next thing this Court would like to point out to the Court of Criminal Appeals is that the undersigned is not in any way biased against Mr. Valeska or in favor of the Defendant, Daniel Moore. I simply insist that if a defendant is going to be tried for Capital Murder and his life possibly be taken from him, if convicted, that he be given a fair and honest trial having available to him all that the law allows.

Mr. Valeska has accused the trial court of acting contemptuously toward him. If I displayed contempt or disrespect at times, I was simply responding in kind to the prosecutor's disrespect, contemptuousness, and frequent violation of my orders. For example, he refused to turn off his cell phone and after warning, allowed his cell phone to ring in court repeatedly. It is my recollection, although I am not certain of the exact number, that on at least six occasions Mr. Valeska's cell phone rang in open court. This Court refrained from finding him in contempt although after each session, he was repeatedly warned not to allow his cell phone to ring in court. The second area for which this Court finds Mr. Valeska's actions contemptuous is when he lied to the Court. He can lie to me personally all he wants, but I will not allow him to lie to the Court. Nor will I

allow him to talk on his cell phone in open court. I feel I have a tremendous duty to uphold the honor and integrity of the Circuit Court of this State. I can assure the Court of Criminal Appeals that Mr. Valeska, if he appears for the re-trial of Mr. Moore, has nothing to fear from this Court, so long as he tells the whole truth without parsing words and turns off his cell phone. Not only will the State of Alabama get a fair trial, but the Defendant will also get a fair trial.

The last point I want to make is posed in the form of a rhetorical question. What is wrong with this picture? On the one hand you have an experienced trial judge who tried a case in which a jury convicted a man of Capital Murder and recommended Life Without Parole. Yet, the judge found the aggravating circumstances outweighed the mitigating circumstances and sentenced the Defendant to death. On the other hand the chief prosecutor withheld evidence, lied to the Court about the existence of the evidence, allowed his cell phone to ring out loud and carried on phone conversations in open court on numerous occasions even after repeated admonitions of the Court. His complaint about being made to take an oath to tell the truth¹ and testify from a witness chair facing the judge in a non-jury hearing (just like every other witness who testifies in the Morgan County courthouse in a non-jury proceeding) is of no consequence. It is inconceivable why I should recuse from this case on the basis of allegations that are brought by the person who created the problems that necessitate the retrial of this case.

If there are any ill feelings towards this Court from the Tipton family, those feelings are misdirected. The Tipton family's frustration, disappointment, and anger, if

¹ Sometimes the undersigned might not require an Officer of the Court to take an oath before testifying, but this was a Capital Murder case and it had already become apparent that Don Valeska had been repeatedly lying to the Court.

any they have, should be directed toward the police officers from the City of Decatur and the Assistant Attorney General, Don Valeska, whose failures to comply with the law and valid court orders have necessitated a new trial.

I encourage the Court of Criminal Appeals to deny this Writ of Mandamus and send this case back to Morgan County, and allow this Court to try it without further delay.

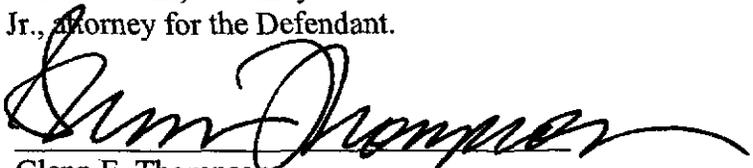
Done this 7th day of March 2007.


GLENN E. THOMPSON
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response has been mailed by United States Mail, first class, postage pre-paid to Don Valeska, Attorney General's Office for the State of Alabama, and Sherman Powell, Jr., attorney for the Defendant.

Done this 7th day of March 2007.


Glenn E. Thompson
Circuit Judge