

STATE APPELLATE DEFENDER OFFICE

DAWN VAN HOEK
DIRECTOR

JONATHAN SACKS
DEPUTY DIRECTOR

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March 12, 2012

Clerk
Calhoun County Circuit Court
County Justice Center
161 E Michigan Avenue
Battle Creek, MI 49014

Re: People v Brandon Kijuan Fields
Circuit Court No. 11-1704FC
Court of Appeals No. 306624

Dear Clerk:

Enclosed please find the original of the following: Praecipe; Notice of Hearing/Proof of Service; and Motion to Compel Production of Defense Trial Counsel's Case File; for filing in your Court.

Thank you for your cooperation.

Sincerely,

Meredith Krause
Special Assistant Defender

MSK/
Enclosure

cc: Calhoun County Prosecutor
Hon. Allen L. Garbrecht
Assignment Clerk
Court of Appeals Clerk (Grand Rapids)
Virginia Cairns
Brandon Kijuan Fields

APPELLATE DEFENDER OFFICE

MAR 16 2012

RECEIVED

STATE OF MICHIGAN
IN THE CALHOUN COUNTY CIRCUIT COURT

FILE WITH ASSIGNMENT CLERK
PRAECIPE FOR MOTION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

BRANDON KIJUAN FIELDS,

Defendant-Appellant.

Court of Appeals No. 306624

Circuit Court No. 11-1704FC

Honorable Allen L. Garbrecht

TO THE ASSIGNMENT CLERK: Please place Defendant's

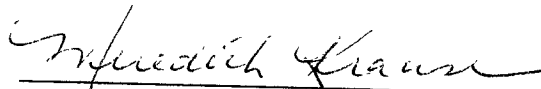
MOTION TO COMPEL PRODUCTION OF DEFENSE TRIAL COUNSEL'S CASE FILE

On the motion calendar for Monday, March 26, 2012, at 10:30 a.m. This motion is to be heard
by JUDGE ALLEN L. GARBRECHT.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

BY:



MEREDITH KRAUSE (P72667)

Special Assistant Defender

101 North Washington

14th Floor

Lansing, MI 48913

(517) 334-6069

Date: March 12, 2012

STATE OF MICHIGAN

IN THE CALHOUN COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee

Court of Appeals No. 306624

-vs-

BRANDON KIJUAN FIELDS
Defendant-Appellant.

Circuit Court No. 11-1704FC

Honorable Allen L. Garbrecht

NOTICE OF HEARING

TO: CALHOUN COUNTY PROSECUTOR

PLEASE TAKE NOTICE that on Monday, March 26, 2012, at 10:30 a.m., the undersigned will move this Honorable Court to grant the within MOTION TO COMPEL PRODUCTION OF DEFENSE TRIAL COUNSEL'S CASE FILE.

STATE APPELLATE DEFENDER OFFICE

BY: Meredith Krause
MEREDITH KRAUSE (P72667)

Date: March 12, 2012

PROOF OF SERVICE

STATE OF MICHIGAN)
COUNTY OF INGHAM)

Meredith Krause, being first sworn, says that on March 12, 2012, she mailed one copy of: PRAECIPE, NOTICE OF HEARING/PROOF OF SERVICE, and MOTION TO COMPEL PRODUCTION OF DEFENSE TRIAL COUNSEL'S CASE FILE to:

Calhoun County Prosecutor
161 E Michigan Avenue
Battle Creek, MI 49014

Virginia C. Cairns (P35056)
211 E Michigan Ave
Battle Creek, MI 49014

Meredith Krause
Meredith Krause

Subscribed and sworn to before me
March 12, 2012.

Jean M. Downey
Jean M. Downey
Notary Public, Ingham County, Michigan
My commission expires: 11/1/2014
IDEN NO. 25741T-J / Meredith Krause

STATE OF MICHIGAN
IN THE CALHOUN COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-vs-

BRANDON KIJUAN FIELDS

Defendant-Appellant.

Court of Appeals No. 306624

Circuit Court No. 11-1704FC

Honorable Allen L. Garbrecht

CALHOUN COUNTY PROSECUTOR /

Attorney for Plaintiff-Appellee

MEREDITH KRAUSE (P72667)

State Appellate Defender Office

101 North Washington

14th Floor

Lansing, MI 48913

(517) 334-6069

Attorney for Defendant-Appellant /

MOTION TO COMPEL PRODUCTION OF DEFENSE TRIAL COUNSEL'S CASE FILE

Defendant BRANDON KIJUAN FIELDS, by and through his attorney, the STATE APPELLATE DEFENDER OFFICE, by MEREDITH KRAUSE, moves this Honorable Court to grant this Motion to Compel Production of Defense Trial Counsel's Case File in this case and says in support thereof that:

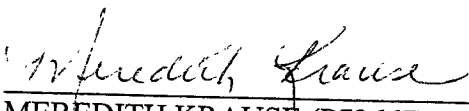
1. Defendant was convicted of second-degree murder, assault with intent to murder, and felony firearm, on August 23, 2011, before the Honorable Allen L. Garbrecht in the Calhoun County Circuit Court.
2. On September 29, 2011, Defendant was sentenced to imprisonment for 28 years to 50 years for second-degree murder, 18 years to 30 years for assault with intent to murder, and 2 years for felony firearm.

3. The State Appellate Defender Office (SADO) was appointed to perfect an appeal and/or pursue post-conviction remedies on October 10, 2011.
4. On October 26, 2011, SADO mailed a letter to Attorney Virginia C. Cairns, who represented Mr. Fields at trial, requesting a copy of Mr. Fields' case file including discovery, and offering to either make those copies at SADO's expense or reimburse Ms. Cairns for reasonable expenses. (Attached as Appendix A).
5. On November 4, 2011, SADO received a response from Attorney Cairns requesting a sum of \$1.00 per page for a copy of her file. (Attached as Appendix B).
6. A subsequent telephone message from SADO to Attorney Cairns requesting clarification and additional information was answered by letter received by SADO on January 18, 2012, requesting a prepaid sum of \$850.00 to provide the documents. (Attached as Appendix C).
7. On February 22, 2012, SADO Deputy Director Jonathan Sacks attempted to contact Attorney Cairns by phone to discuss a reasonable copy charge; however that call was not returned as of the signing of this motion.
8. This Court has ancillary jurisdiction to hear and consider a Motion to Compel Production of Defense Trial Counsel's Case File. See, e.g., *People v Washington*, 134 Mich App 504, 509; 351 NW2d 577 (1984) ("The original and exclusive jurisdiction of the Recorder's Court over felonies committed in Detroit includes the ancillary power to return property to those from whom it has been seized for use as possible evidence").

9. Mr. Fields is entitled to the effective assistance of counsel on appeal. Const. 1963, art 1, § 20; *Evitts v Lucey*, 469 U.S. 387 (1985). In order to render effective assistance of counsel on appeal, counsel must review the discovery provided to Attorney Cairns as well as her complete file to determine the merit of any potential issues on appeal. A signed authorization from Mr. Fields to release otherwise privileged documents is attached as Appendix D.
10. Attorney Cairns has a duty to make Mr. Fields' file available to appellate counsel. Under MRPC 1.16(d), upon termination of her representation, Attorney Cairns must "take reasonable steps to protect ... [Mr. Fields'] interests, such as ... surrendering papers ... to which ... [Mr. Fields] is entitled...." Further, under recently amended MCR 6.005(H)(5), ADM File 2010-15, effective May 1, 2012, "The responsibilities of the trial lawyer who represents the defendant include ... when an appellate lawyer has been appointed or retained, promptly making the defendant's file, including all discovery material obtained, available for copying upon request of that lawyer...."
11. An attorney may "properly charge reasonable costs" to locate and copy a client's file. State Bar of Michigan Formal Ethics Opinion R-019. However, Attorney Cairns has demanded \$1.00 per page, or \$850.00 to copy Mr. Fields' file. Commercial rates for copies range from \$0.10 to \$0.13, which SADO remains willing to pay. Furthermore, SADO was willing to pick up the file, copy it on SADO's equipment, and promptly return the file to Ms. Cairns.

WHEREFORE, Defendant respectfully moves that this Honorable Court grant this Motion to Compel Production of Defense Trial Counsel's Case File and order Attorney Virginia Cairns to either (1) make her file available forthwith to the State Appellate Defender Office for copying at SADO's expense and return; or (2) provide the previously requested copies upon tender of \$0.10 per page, or \$85.00.

STATE APPELLATE DEFENDER OFFICE

BY: 
MEREDITH KRAUSE (P72667)

Date: March 12, 2012

Appendix A

Letter from SADO to Virginia Cairns, October 26, 2011

STATE APPELLATE DEFENDER OFFICE

Lansing Office

DAWN VAN HOEK
DIRECTOR

JONATHAN SACKS
DEPUTY DIRECTOR

www.sado.org
Client calls: 313.256.9822



MAIN OFFICE:
PENOBSCOT BLDG, STE 3300
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DETROIT, MI 48226-4281
Phone: 313.256.9833 • Fax: 313.965.0372

LANSING OFFICE:
101 N. WASHINGTON, 14TH FLOOR
LANSING, MI 48913-0001
Phone: 517.334.6069 • Fax: 517.334.6987

October 26, 2011

Virginia C. Cairns
Attorney at Law
211 E. Michigan Ave.
Battle Creek, MI 49014

Re: **People v Brandon Kijuan Fields**
Lower Court No. 11-1704FC

Dear Attorney Cairns:

The State Appellate Defender Office has been assigned to handle the appeal of **Brandon Kijuan Fields**, whom you represented at trial in **Calhoun County Circuit Court**. An attorney has not yet been assigned the case, but I wanted to let you know that an appeal has been taken.

I am writing to request that you forward copies of the police reports, medical and psychological reports, school records, and any other discovery materials as soon as possible. See, e.g., MRPC 1.16(d). If copying or mailing is a problem, we will be pleased to copy the documents, return the originals, and reimburse any reasonable expenses. The materials can also be emailed to mkrause@sado.org. The discovery material can significantly affect the strategy of an appeal and make it easier to understand what happened at trial. It is critical to get this material at the earliest stage of the appeal.

Thanks in advance for your prompt cooperation in forwarding this material. If you have any questions, or need further information, please call.

Sincerely,

A handwritten signature in black ink, appearing to be "J. Sacks".

Jonathan Sacks
Deputy Director

JRS/msk
Iden No. 25741T-J

Appendix B

Letter from Virginia Cairns to SADO, received November 4, 2011

VIRGINIA C. CAIRNS
-ATTORNEY AT LAW-
211 EAST MICHIGAN AVENUE
BATTLE CREEK, MICHIGAN 49014
269/964-8440

November 1, 2011

Mr. Jonathan Sacks, Deputy Director
State Appellate Defender Office
101 North Washington, 14th Floor
Lansing, MI 48913-0001

Received

NOV 4 2011

SADO Lansing

RE: PEOPLE V BRANDON FIELDS
CASE NO. 11-1704-FC

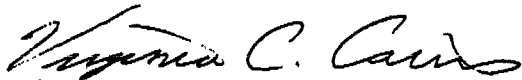
Dear Mr. Sacks:

Thank you for your letter dated October 26, 2011, which I received and am responding to this date.

Mr. Fields has already been provided with all the documents in my file. That includes numerous police reports and preliminary examination transcripts. If you would like duplicate copies, I will be glad to provide them at \$1.00 per page (prepaid).

If I may be of assistance, please let me hear from you.

Yours very truly,



Virginia C. Cairns
VCC/kad

Appendix C

Letter from Virginia Cairns to SADO, received January 18, 2012

VIRGINIA C. CAIRNS
-ATTORNEY AT LAW-
211 EAST MICHIGAN AVENUE
BATTLE CREEK, MICHIGAN 49014
269/964-8440

January 14, 2012

Mr. Jonathan Sacks, Deputy Director
State Appellate Defender Office
101 North Washington, 14th Floor
Lansing, MI 48913-0001

RE: PEOPLE V BRANDON FIELDS
CASE NO. 11-1704-FC

Received

JAN 18 2012

SADO Lansing

Dear Mr. Sacks:

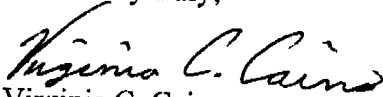
Recently, I received a telephone message from your office concerning the above-noted case.

The female caller requested information on the cost of copies for all documentation in my file.

As I had indicated in my previous letter to you dated November 1, 2011, the cost per page is \$1.00. I have over 900 pages of documents in my file. It appears a few of the documents are duplicates. The cost to your office for copies of all documents in my file would be \$850.00 (prepaid).

If I may be of assistance, please let me know.

Yours very truly,


Virginia C. Cairns
VCC/djc

Appendix D

Waiver of Attorney/Client Privilege

WAIVER OF ATTORNEY/CLIENT PRIVILEGE

BRANDON KIJUAN FIELDS, hereby knowingly and voluntarily waives the attorney-client privilege with respect to confidential communications between himself and Attorney Virginia Cairns for the limited purpose of allowing Attorney Cairns to freely communicate with, and provide her trial case file to, his appellate attorneys RANDY E. DAVIDSON and the State Appellate Defender Office.

Brandon ^{KIJUAN} ~~XXXX~~ Fields
BRANDON KIJUAN FIELDS

RECEIVED

MAR 09 2012

APPELLATE DEFENDER OFFICE