

FILED IN OFFICE

SEP 16 2016

IN THE SUPERIOR COURT OF FLOYD COUNTY
STATE OF GEORGIA

C. Dillard

CLERK

STATE of GEORGIA,

v.

JOSEPH S. WATKINS

CASE NO. 01-CR-16707 - JFL002

MOTION FOR AN ORDER TO ACCESS TRIAL RECORDINGS

Undisclosed LLC (“Undisclosed”), a Delaware company that is currently producing a podcast regarding the trial of Joseph Watkins, respectfully moves this Court pursuant to Uniform Superior Court Rule 21 to issue an order allowing Undisclosed to access and copy audio recordings of several proceedings in this case. Specifically, Undisclosed seeks access to all audio recordings of the following proceedings:

1. Preliminary Hearing on December 14, 2000
2. Bond Hearing on January 2, 2001
3. Trial on June 25, 2001 through July 2, 2001

Under *Green v. Drinnon*, the recordings of the above proceedings are public records and are therefore open for inspection and copying pursuant to Rule 21.¹ 262 Ga. 264, 264, 417 S.E.2d 11, 12 (Ga. 1992) (“No law limits public access to the judge’s taped comments nor can access to them be denied under the procedure set out in Rule 21, which he has not invoked. Therefore, the tape or its transcript must be made available for public inspection under Rule 21.”). Undisclosed needs access to the audio recordings, as they are vital to the production of Undisclosed’s podcast. Given the nature of a podcast, audio recordings are much more useful than the transcripts of these proceedings. In addition, the recordings will provide necessary

¹ A copy of *Green v. Drinnon* is attached hereto as Exhibit A.

context and other information that is missing from the transcripts of these proceedings.

Accordingly, Undisclosed respectfully requests that this Court issue an order allowing Undisclosed to access and copy the recordings of the above-listed proceedings as soon as practicable. Undisclosed's counsel has conferred with Mr. Watkins's counsel, and Mr. Watkins does not oppose this motion. A proposed order on this motion is attached hereto as Exhibit B.

Respectfully submitted, this 15th day of September, 2016.



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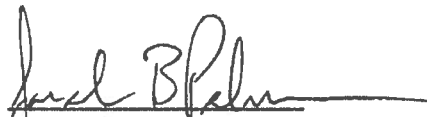
Attorney for Undisclosed LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the within and foregoing **MOTION FOR AN ORDER TO ACCESS TRIAL RECORDINGS** by U.S. Mail postage pre-paid, upon the following:

Office of the Floyd County District Attorney
3 Government Plaza #108
Rome, Georgia 30161

This 15th day of September, 2016.



Sarah Brewerton-Palmer
Georgia Bar No. 589898
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Exhibit A

KeyCite Yellow Flag - Negative Treatment
Distinguished by In re Gwinnett County Grand Jury, Ga.,
October 27, 2008

262 Ga. 264
Supreme Court of Georgia.

GREEN
v.
DRINNON, INC.

No. S92A0486.
|
June 11, 1992.

State court judge appealed from order of the Superior Court, Baldwin County, John Lee Parrott, J., requiring him to give to local newspaper tape of comments he made in open court. The Supreme Court, Fletcher, J., held that tape of trial judge's comments made from bench that was recorded by court reporter while court was in session was a court record that was open for public inspection.

Affirmed.

West Headnotes (2)

[1] Records

↔ Court records

Tape of trial judge's comments made from bench that was recorded by court reporter while court was in session was a court record that was open for public inspection under rule making court records available for public inspection. Uniform State Court Rule 21.

3 Cases that cite this headnote

[2] Records

↔ Court records

Records

↔ In general: freedom of information laws in general

Court rules, rather than Open Records Act, governed public access to court records.

Uniform State Court Rule 21; O.C.G.A. § 50
18-70 et seq.

3 Cases that cite this headnote

Attorneys and Law Firms

*265 **11 Marc T. Treadwell, Chambless, Higdon & Carson, Macon, for green.

Ed S. Sell, III, Sell & Melton, Macon, for Drinnon, Inc.

Opinion

*264 FLETCHER, Justice.

Judge Robert H. Green of the State Court of Baldwin County appeals from a superior court order requiring him to give the local newspaper a tape of comments he made in open court. We affirm that Judge Green must make available the tape or its transcript, but for a different reason than the trial court.

Judge Green made opening remarks on September 23, 1991, after court was called into session but before the call of any case.¹ The court reporter recorded Judge Green's comments on a tape recorder. The Union-Recorder, the local newspaper, **12 sought a transcript of the judge's remarks from the court reporter and later filed a request with the judge under the Open Records Act. The requests were denied. The Union-Recorder sued the judge, alleging that the tape was a public record under the Open Records Act and a court record open for public inspection under Uniform State Court Rule 21.

[1] 1. In this state, "the public and the press have traditionally enjoyed a right of access to court records." *Atlanta Journal & Atlanta Constitution v. Long*, 258 Ga. 410, 411, 369 S.E.2d 755 (1988); see *R.W. Page Corp. v. Lumpkin*, 249 Ga. 576 n. 1, 292 S.E.2d 815 (1982). To preserve this right, this court and the council of superior court judges have adopted a rule that presumes the public will have access to all court records. See *Long*, 259 Ga. at 413, 369 S.E.2d 755. State Court Rule 21 provides: "All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below."

An official court reporter's tape of a judge's remarks in open court is a court record. In *R.W. Page Corp. v. Kilgore*, 257 Ga. 179, 356 S.E.2d 870 (1987), we held that the coroner could not claim that a transcript of a public inquest was not a public record.

When a coroner, who is a public official, makes an inquest and opens it to the public, and the testimony given at the public inquest is recorded and transcribed at public expense, the coroner has waived any right which he might claim to have to contend that the transcript is not a public record.

Id. Similarly, Judge Green waived any right to claim that the tape of his comments is not a court record when he made public comments from the bench that were recorded while court was in session. No law limits public access to the judge's taped comments nor can access to them be denied under the procedure set out in Rule 21, which he has not invoked. Therefore, the tape or its transcript must be made available for public inspection under Rule 21.

Footnotes

1 A transcript of the judge's comments shows the following beginning:

THE COURT: Good morning, ladies and gentlemen. We will ask Deputy Shane Gladin to open court for us this morning.

DEPUTY GLADIN: The September Term of Baldwin County State Court is now in session. Honorable Robert Green presiding.

[2] 2. Since court rules govern public access to court records, it is not necessary to determine whether the Open Records Act applies to the judicial branch of government. We disapprove of the trial court's ruling to the extent that it relied on the Open Records Act to grant the newspaper access to the court record. See *Coggin v. Davey*, 233 Ga. 407, 411, 211 S.E.2d 708 (1975); *Fathers Are Parents Too, Inc. v. Hunstein*, 202 Ga.App. 716, 415 S.E.2d 322 (1992); see also 1979 Att'y Gen. Op. 79-25 (concluding that the sunshine law does not apply to the judiciary because, like the General Assembly, the courts have a history of self-regulation).

Judgment affirmed.

All the Justices concur.

All Citations

262 Ga. 264, 417 S.E.2d 11, 20 Media L. Rep. 1359

Exhibit B

**IN THE SUPERIOR COURT OF FLOYD COUNTY
STATE OF GEORGIA**

STATE of GEORGIA,

v.

JOSEPH S. WATKINS

CASE NO. 01-CR-16707 - JFL 002

[PROPOSED] ORDER

This matter came before the Court on the motion of Non-Party Undisclosed LLC pursuant to Uniform Superior Court Rule 21 for an order granting access to certain audio recordings of proceedings in this case. Having fully considered the applicable law, the court hereby **GRANTS** the motion. Undisclosed LLC and its agents may access and copy the audio recordings of the following proceedings:

1. Preliminary Hearing on December 14, 2000
2. Bond Hearing on January 2, 2001
3. Trial on June 25, 2001 through July 2, 2001

Undisclosed LLC may access the recordings by making an appointment with the Superior Court Clerk of Floyd County.

DONE and ORDERED this ____ day of _____, 2016.

The Honorable Walter J. Matthews
Judge, State Court of Floyd County

Prepared by:

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