

**Summary of SC94602, *State ex rel. Leon V. Taylor and Willie Kelly Owens v. Terry Russell***

Original proceeding arising in St. Francois County

Submitted on Court filings and decided November 18, 2014; opinion issued December 9, 2014

**Attorneys:** Taylor and Owens were represented by Elizabeth Unger Carlyle of Kansas City, (816) 525-6540; and the warden was represented by Stephen Hawke, Caroline M. Coulter and Michael J. Spillane of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A death row inmate and his half-brother sought a writ ordering the warden where the inmate was being held to permit the half-brother to witness the inmate's execution. The Supreme Court of Missouri issued its permanent writ so compelling the warden, explained in a unanimous written by Judge George Draper III. The statute governing witnesses to an execution excludes only incarcerated offenders or those younger than 21 years; it contains no exception or prohibition for co-defendants but does authorize the warden to invite peace officers to watch the execution to maintain security.

**Facts:** Leon Taylor was scheduled to be executed November 19, 2014. He designated as one of his witnesses to the execution his half-brother, Willie Kelly Owens, who had participated in part of the underlying crime. At the conclusion of his November 18 visit with Taylor, Owens was advised that he would not be permitted to witness Taylor's execution. Taylor and Owens filed a petition for a writ of mandamus to compel the warden of the prison where Taylor was being held to permit Owens to witness Taylor's execution. The state filed a response, and Taylor and Owens filed a reply. Given the immediacy of the proceedings, this Court dispensed with further briefing and oral argument pursuant to Rule 84.24(j) and issued its permanent writ of mandamus ordering the warden to permit Owens to be present as a witness at Taylor's execution. The Court now issues this opinion pursuant to Rule 84.24(l) to explain its reasoning.

**PERMANENT WRIT ISSUED.**

**Court en banc holds:** Taylor and Owens demonstrated they had a clear, unequivocal, specific right to have Owens witness Taylor's execution pursuant to section 546.740, RSMo. The specific duties imposed by this statute prevail over a more general statute outlining a warden's discretion to make rules for prison management and safety. Under section 546.740, the warden's duty is clear and unequivocal – the warden “shall” allow a defendant's designated individuals to witness the execution, provided the witness is not another incarcerated offender or younger than 21 years. The statute contains no exception or prohibition for co-defendants who participated in the underlying crime. But it does give the warden authority to invite such peace officers as the warden thinks expedient to witness the execution to maintain security.