

IN THE SUPREME COURT OF FLORIDA

MARK SIEVERS, :

Appellant, :

vs. : Case No. SC20-225

STATE OF FLORIDA, :

Appellee. :

_____ :

UNOPPOSED MOTION TO SUPPLEMENT THE RECORD

COMES NOW the Appellant, MARK SIEVERS, by and through counsel, and moves to supplement the record in this capital appeal. As grounds therefor the following is stated:

1. HEARINGS: Appellant requests that all hearings on the dates listed be transcribed and included in the record on appeal in order to enable a thorough review of the proceedings. The trial court's docket shows that hearings occurred on the following dates:

- 04-21-16 covered by Digital Reporting
- 05-18-16 covered by Digital Reporting
- 07-27-16 covered by Martina-Mikulice Reporting
- 09-01-16 covered by Martina-Mikulice Reporting
- 10-07-16 covered by Martina-Mikulice Reporting
- 12-15-16 covered by Martina-Mikulice Reporting
- 02-23-17 covered by Martina-Mikulice Reporting
- 04-04-17 covered by Martina-Mikulice Reporting

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05-04-17 covered by Martina-Mikulice Reprting
07-14-17 covered by Martina-Mikulice Reporting
09-20-17 covered by Martina-Mikulice Reporting
10-24-17 covered by Martina-Mikulice Reporting
01-11-18 covered by Martina-Mikulice Reporting
04-24-18 covered by Martina-Mikulice Reporting
06-28-18 covered by Martina-Mikulice Reporting
08-02-18 covered by Martina-Mikulice Reporting
08-13-18 covered by Martina-Mikuice Reporting
09-14-18 covered by Martina-Mikulice Reporting
11-13-18 covered by Martina-Mikulice Reporting
12-03-18 covered by Martina-Mikulice Reporting
01-25-19 covered by Martina-Mikulice Reporting
04-10-19 covered by Martina-Mikulice Reporting
05-09-19 covered by Martina-Mikulice Reporting
05-14-19 covered by Martina-Mikulice Reporting
06-03-19 covered by Martina-Mikulice Reporting
08-22-19 covered by Martina-Mikulice Reporting
08-28-19 covered by Martina-Mikulice Reporting
10-01-19 covered by Martina-Mikulice Reporting
10-07-19 covered by Martina-Mikulice Reporting
10-14-19 covered by Martina-Mikulice Reporting
11-05-19 covered by Martina-Mikulice Reporting
02-05-20 covered by Martina-Mikulice Reporting
04-08-20 covered by Digital Reporting

2. COURT DOCUMENTS: Numerous documents filed in the case below were not included with the record on the appeal. Undersigned Counsel has attempted to identify those documents by comparing the Lee County Clerk's Case Summary with the Master Index to the Record. Appellant requests the clerk be directed to include the following documents listed by date:

2/27/2016 LE Warrant returned
2/27/2016 Pretrial Disclosure
2/27/2016 Certificate of compliance
3/14/2016 Notice to Clerk
3/17/2016 Application for Indigent Status
3/17/2016 Pretrial disclosure
3/21/2016 Certification of Conflict of Interest
3/22/2016 Order allowing Withdrawal
3/28/2016 Notice of Appearance
3/28/2016 Notice of Intention
3/28/2016 Felony Hearing/Continuance
3/29/2016 Motion for reduction
4/6/2016 Answer to Demand
4/7/2016 Demand for Supplemental
4/11/2016 Response to request
4/15/2016 Notice of Hearing
4/19/2016 Notice of Filing
4/20/2016 Notice of Discovery

4/20/2016 Notice of Discovery
4/21/2016 Answer to Demand
4/25/2016 Order
4/28/2016 Motion
5/6/2016 Capias Returned
5/6/2016 Acknowledgment of New Case
5/9/2016 Felony Hearing/Continuance
5/10/2016 Notice of Discovery
5/11/2016 Order from 2d DCA
6/10/2016 Notice of Discovery
6/14/2016 Notice of Discovery
6/24/2016 Request for Discovery
6/24/2016 Additional Discovery Request
6/27/2016 Answer to Demand
6/27/2016 Motion for Attorney Fees
6/27/2016 Order from 2d DCA
7/18/2016 Order from 2d DCA
7/19/2016 Notice of Hearing
7/22/2016 Notice of Hearing
7/22/2016 Notice of Hearing
7/22/2016 Amended Notice of Hearing
7/25/2016 Notice of Cancellation
7/27/2016 Notice of Discovery
8/23/2016 Motion filed
9/6/2016 Answer to Demand

10/3/2016 Notice of Hearing
11/4/2016 Order Declaring Defendant Indigent
11/7/2016 Case law filed
11/7/2016 Case law filed
11/7/2016 Motion filed
11/22/2016 Notice of Appeal
11/28/2016 Answer to Demand
12/15/2016 Case Management Conference order
12/22/2016 Acknowledgment of New Case
12/22/2016 Order from 2d DCA
12/22/2016 Order from 2d DCA
1/2/2017 Motion to Appoint Attorney
1/9/2017 Order from 2d DCA
1/30/2017 Order from 2d DCA
2/15/2017 Order from 2d DCA
2/22/2017 Order filed Denying Motion
3/7/2017 Motion to Compel
3/8/2017 Other Document Filed
3/15/2017 Motion for Costs
3/27/2017 Notice of Hearing
3/30/2017 Notice of Discovery
4/25/2017 Order Granting Motion to Compel
4/27/2017 Answer to Demand
4/27/2017 Order Granting Motion
5/3/2017 Notice of Appearance

5/3/2017 Notice of Taking Depo (multiple)
5/5/2017 Return of Service
5/17/2017 Answer to Demand
6/1/2017 Notice filed
6/6/2017 Motion filed
6/8/2017 Notice of Hearing
6/13/2017 Answer to Demand
6/14/2017 Notice of Discovery
6/15/2017 Answer to Demand
6/19/2017 Order - Granted State's Motion
6/20/2017 Answer to Demand
6/21/2017 Notice of Discovery
6/23/2017 Answer to Demand
7/28/2017 Notice of Discovery
7/31/2017 Other Document Filed
8/11/2017 Notice of Discovery
8/15/2017 Answer to Demand
8/15/2017 Notice of Discovery
8/31/2017 Motion filed
9/6/2017 Notice of Taking Deposition (multiple)
9/25/2017 Answer to Demand
10/13/2017 Witness list
10/13/2017 Motion to Sever
10/16/2017 Motion
10/16/2017 Notice

10/16/2017 Response
10/16/2017 Notice
10/16/2017 Response
10/19/2017 Notice
10/19/2017 Response
10/19/2017 Answer
10/19/2017 Notice
10/19/2017 Notice
10/23/2017 State Response
10/23/2017 Notice
10/23/2017 Notice
10/23/2017 Notice
10/25/2017 Answer to Demand
11/1/2017 Order Granting Motion
11/1/2017 Order Granting Motion
11/2/2017 Order Granting Motion
11/3/2017 Notice of Discovery
11/8/2017 Amended Notice
11/8/2017 Amended Notice
11/8/2017 Notice
11/8/2017 Notice
11/8/2017 Notice
11/9/2017 Notice of Discovery
1/12/2018 Notice of Discovery
1/17/2018 Notice

1/17/2018 Notice
1/17/2018 Notice
1/24/2018 Motion to Compel
1/31/2018 Motion for Costs
2/2/2018 Notice of Discovery
2/20/2018 Notice of Discovery
2/21/2018 Notice of Taking Deposition
3/1/2018 Notice of Discovery
3/2/2018 Notice of Hearing
3/2/2018 Notice of Taking Deposition
3/5/2018 Request for Discovery
3/8/2018 Notice
3/8/2018 Response
3/9/2018 Answer to Demand
4/9/2018 Notice of Discovery
4/9/2018 Notice of Filing State's Letter
4/25/2018 Record of Exhibits
4/25/2018 Confidential Documents
5/9/2018 Notice of Taking Deposition (multiple)
5/14/2018 Order
5/14/2018 Letter to Judge
6/1/2018 Notice of Hearing
6/21/2018 Notice of Discovery
6/27/2018 Witness List
6/27/2018 Notice of Discovery

7/17/2018 Notice of Taking Deposition (multiple)
7/17/2018 Defendant's Discovery
7/17/2018 Notice of cancellation
7/27/2018 Amended Witness List (multiple)
7/30/2018 Notice of filing with attachment
7/30/2018 Notice of Hearing
8/1/2018 Answer to Demand
8/10/2018 Notice of Clerk's Review
8/10/2018 Notice of Taking Deposition (multiple)
8/14/2018 Notice of Hearing
8/16/2018 Notice of Filing Sheriff's Response
9/13/2018 Motion for Costs
9/21/2018 Answer to Demand
9/26/2018 Notice of Taking Deposition
10/9/2018 Order
10/23/2018 Answer to Demand
10/25/2018 Notice of Taking Deposition (multiple)
10/30/2018 Answer to Demand
10/30/2018 Notice of Discovery
11/12/2018 Notice of Filing JAC response
11/12/2018 Notice of hearing
11/21/2018 Notice of Taking Deposition (multiple)
11/26/2018 Answer to Demand
11/30/2018 Notice of Discovery
11/30/2018 Amended Witness List

12/6/2018 Notice of Discovery
1/2/2019 Notice of Taking Deposition
1/7/2019 Notice of Taking Deposition (multiple)
2/5/2019 Order
2/11/2019 Notice of Taking Deposition (multiple)
3/4/2019 Notice of Discovery
3/8/2019 Notice of Discovery
3/8/2019 Witness List
3/11/2019 Notice of Discovery
4/3/2019 Motion for Continuance
4/4/2019 Notice of Filing
4/9/2019 Notice of Discovery
4/9/2019 Notice of Hearing (multiple)
4/10/2019 Motion for Continuance
4/11/2019 Correspondence
4/11/2019 Amended Witness List
4/11/2019 Notice of Unavailability
4/11/2019 Stipulation
4/15/2019 Notice of Unavailability
4/18/2019 Notice of hearing
4/18/2019 Notice of taking Depositions
4/20/2019 Exparte motion
4/22/2019 Notice of filing
4/22/2019 Notice of Intent to Offer Business records

(multiple)

4/22/2019 Notice filed

4/23/2019 Notice of Discovery

5/1/2019 Motion to Compel

5/3/2019 Demand for Discovery

5/6/2019 Notice of Intent to Offer Business records

(multiple)

5/7/2019 Notice of Discovery

5/7/2019 Notice of Intent to Offer Business Records

(multiple)

5/9/2019 "Other Document filed"

5/9/2019 Notice of Taking Deposition

5/10/2019 Notice of Taking deposition

5/14/2019 Notice of hearing

5/14/2019 Amended Witness list

5/14/2019 Motion for Costs

5/14/2019 Notice of filing with JAC response (multiple)

5/14/2019 Demand for Discovery

5/17/2019 Victim Information

5/17/2019 Amended Notice of taking deposition

5/20/2019 Notice of Intent to Offer business records

(multiple)

5/20/2019 Demand for supp discovery

5/23/2019 Notice of Discovery

5/23/2019 Notice of intent to offer business records

6/3/2019 Notice filed

6/10/2019 Notice of hearing (multiple)

6/13/2019 Proposed Amended Venire Questionnaire
(multiple)

8/21/2019 Notice of Discovery

8/23/2019 Notice of Intent to Offer Bus. Records
(multiple)

8/26/2019 Motion to continue

9/4/2019 Notice of Unavailability

9/5/2019 Notice of filing

9/5/2019 Notice filed

9/6/2019 Motion filed

9/6/2019 Notice of Intent to Offer Bus. Records
(multiple)

9/6/2019 Notice of Discovery

9/7/2019 Notice of hearing

9/16/2019 Order denying Objection

9/20/2019 Demand for Discovery

9/23/2019 Notice of Discovery

9/24/2019 Notice of Amended Discovery

9/25/2019 Notice of discovery

9/26/2019 Order denying state's second motion

9/26/2019 Order denying motion in limine

9/29/2019 Notice of filing State's proposed
questionnaire

9/30/2019 Motion to Compel

9/30/2019 Demand for Supp Discovery
10/1/2019 Amended Witness List
10/22/2019 Exparte Motion (multiple)
10/23/2019 Exparte Motion
10/23/2019 Reply
10/24/2019 JAC response (multiple)
10/28/2019 Notice of Intent to Offer Bus. Records
10/30/2019 Order (multiple)
10/30/2019 Response
11/1/2019 Amended witness list
11/4/2019 Notice of taking deposition
11/6/2019 Notice of Discovery
11/8/2019 Exparte motion
11/8/2019 Order
11/13/2019 Notice of Discovery
11/13/2019 Order granting State's exparte motion
11/20/2019 Evidence custody form
11/27/2019 Evidence custody form
12/2/2019 Evidence custody form
12/2/2019 Evidence custody form
12/3/2019 question from jurors filed
12/4/2019 fingerprints taken
12/4/2019 question from jurors (multiple)
12/9/2019 Witness list
12/10/2019 Question from jurors (multiple)

12/10/2019 response to jurors question

12/20/2019 Memorandum

12/27/2019 Statements of Codefendant (multiple)

1/3/2020 fingerprints taken

3. EXHIBITS: Defense trial exhibits consisting of video recordings are not in the record. Issues arose at trial concerning video evidence that Sievers' attorney intended to introduce during the defense's case. The recordings were excluded by the trial court, but the transcript indicates that the recordings were marked for appellate purposes.

4. A video is referenced at T3897 and is described by the Assistant State Attorney as a disk containing a recording of an interview with Mr. Wright while under police and State Attorney interrogation.

5 At T3899, the defense attorney describes the video as exhibit 3 and 3-A (a shorter version). However, in a later discussion, the exhibit is referenced as Exhibit one with an A and B, by the judge, but then called number two by the defense attorney. T3925 But reference is made to Defense 2 as a different exhibit (the Cellebrite). T3926

6. The record supplied does not appear to contain a Defense exhibit with a description matching that discussed at trial. Appellant requests that the clerk of the circuit court be directed to attempt to locate the exhibit, which is described at

T3897 as disk containing a recording of an interview with Mr. Wright while under police and State Attorney interrogation, and if unsuccessful, to notify this Court so that relinquishment can be ordered for the purpose of reconstructing the record.

7. A second video is not in the record on appeal. It was excluded from the Defense case, and it is described as Exhibit 4 (a thumb drive) and 4A (a disk) in the transcript T3926-27. That video was played in court during a proffer to the trial judge at T3914 and was ruled inadmissible pursuant to a State objection. T3924

8. The Master Index to the Record supplied by the clerk, at page 17, notes: "Defense Exhibits 0004 is Unable to Reproduce [sic] and 004A is Blank (not admitted)." Appellant requests that this Court direct the clerk to copy the contents of the thumb drive to a CD if feasible to reproduce the content in that manner, or in the alternative, relinquish jurisdiction for the purpose of reconstruction of the record with these exhibits.

9. PSI: The PSI was objected to by Appellant's counsel during the sentencing hearing and the trial court made a ruling on the objections. The record does not include a copy of the PSI. Appellant requests that the clerk be directed to supplement the record with the PSI.

10. Undersigned counsel has consulted with Assistant Attorney General Christina Pacheco, who does not object to this motion.

WHEREFORE, Appellant requests that this motion to supplement the appellate record be granted.

CERTIFICATE OF SERVICE

I certify that a copy has been served by the e-portal on Christina Pacheco at Christina.pacheco@myfloridalegal.com, Deborah.speer@myfloridalegal.com, paula.montlary@myfloridalegal.com, cappapp@myfloridalegal.com; Michael Mummert at mmummert@msslawpllc.com and the Clerk of the Circuit Court at lslisz@leeclerk.org on this 22nd day of May, 2020.

Respectfully submitted,

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