

IN THE SUPREME COURT OF FLORIDA

MARK SIEVERS, :

Appellant, :

vs. : Case No. SC20-225

STATE OF FLORIDA, :

Appellee. :

_____ :

MOTION TO RELINQUISH JURISDICTION TO TRIAL COURT FOR
RECONSTRUCTION OF RECORD & SECOND MOTION TO SUPPLEMENT THE RECORD

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

1. Video Exhibit: An important issue in this capital appeal concerns the exclusion of a defense exhibit called the Curtis Wright proffer video. It was a recording that was provided to the defense in discovery. The video is referenced at T3897 and is described by the Assistant State Attorney as a disk containing a recording of an interview with the cooperating codefendant, Curtis Wright, while under police and State Attorney interrogation.

2. During the trial, the judge ruled that Sievers would not be allowed to admit the Curtis Wright proffer video in evidence for the jury to see, but the judge allowed Sievers to put

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the video into evidence for appellate purposes. The video is apparently several hours long and was admitted into evidence by Sievers during trial, although it was not played in court. The parties and the judge well understood what the exhibit contained. At T3899, the defense attorney describes the video as exhibit 3 and 3-A (shorter version). However, in a later discussion, the exhibit is referenced as Exhibit one with an A and B, by the judge. T3925

3. The exhibit has not been included in the record, and after several phone calls and emails, undersigned counsel cannot reconcile the defense attorney's position with that of the clerk as to the video. The Lee County Clerk who manages the evidence states that she has a blank CD and a flash drive in an envelope and the flash drive contains only a short clip (e.g. two minutes) from the video.

4. The Original 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 previously requested the clerk to copy the contents of the thumb drive to a CD if feasible to reproduce the content in that manner. The short clip has now been copied for the record and provided on a CD with the first supplement. That short snippet is not the complete video that was discussed and contemplated at the trial when the evidentiary ruling was made.

5. Sievers' trial attorney has informed undersigned counsel that a copy of the video was working at the time it was

put in evidence because the attorney played it for a law enforcement officer outside the courtroom before it was put in evidence.

6. Sievers' trial attorney was under the impression that the problem involved the clerk's inability to copy the video, and that was resolved when three portable thumb drives were recently provided to the clerk by the Assistant State Attorney, Mr. Hunter, for the purpose of copying the full Curtis Wright proffer video and providing it to the parties and this Court. This occurred after the Appellant's first motion to supplement was filed. However, because the clerk states that the video does not exist on either the CD or the flash drive in evidence, the thumb drives were returned to Mr. Hunter.

7. It is apparent that the video at issue is a large electronic file, and the trial participants were aware of the contents of the file. Undersigned counsel has not obtained or viewed it to date.

8. Appellant requests this Court to relinquish jurisdiction for the purpose for reconstructing the record with the full video of the Curtis Wright proffer for the appellate record. The defense attorney will be able to provide a working copy of the video with copies to the trial court for inclusion in the appellate record.

9. Transcripts: Appellant requested a pretrial hearing of May 14, 2019 in the prior motion to supplement and provided designations to the court reporter. The supplement which has since

been received includes a hearing with that date, but that transcript is incorrectly labeled and is in fact a duplicate of a hearing held on the later date of June 14, 2019. Appellant has contacted the court reporter to clear up the confusion and attempt to get the missing transcript of the May hearing, which is now being transcribed, and will be submitted to the clerk.

10. Appellant has discerned from the transcripts received in the first supplement that evidence was taken at a first-appearance hearing on February 27, 2016, and a transcript of that hearing is necessary. Appellant requests supplementation of the record with that hearing.

11. Documents: Joint motions filed by co-defendant Jimmy Rodgers are discussed in pretrial hearings recently obtained in the supplement. Both defendants were charged in one indictment under the same case number, but the clerk did not include all motions and orders that affected both defendants on Mr. Sievers' trial docket. Undersigned counsel is attempting to identify documents that are listed on Rodgers' docket but also pertained to Sievers' case. At this time, the following from the Rodgers' docket have been identified that should be included in the record:

5/9/19 Motion Index filed by Rodgers

6/17/19 Order on Joint Juror Motions

8/7/19 Motion to Sever Defendants

8/22/19 Order on Severance

12. Exhibits: The record reflects that paper exhibits were filed at hearings of 2/27/2016 and 4/21/2016. Appellant

requests that these exhibits be included in the record on appeal.

13. Undersigned counsel has consulted with Assistant Attorney General Christina Pacheco, and she intends to file a response to this motion.

WHEREFORE, Appellant requests this Court to grant this motion to relinquish jurisdiction for reconstruction and supplementation of the appellate record.

CERTIFICATE OF SERVICE

I certify that a copy has been served by the e-portal on Christina Pacheco at the Office of the Attorney General at Christina.pacheco@myfloridalegal.com, Deborah.speer@myfloridalegal.com, paula.montlary@myfloridalegal.com, cappapp@myfloridalegal.com on this 7th day of July, 2020.

Respectfully submitted,

HOWARD L. "REX" DIMMIG, II
Public Defender
Tenth Judicial Circuit
(863) 534-4200

/s/Karen M. Kinney
KAREN M. KINNEY
Assistant Public Defender
Florida Bar Number 0856932
P. O. Box 9000 - Drawer PD
Bartow, FL 33831
appealfilings@pd10.org
kkinney@pd10.org
kstockman@pd10.org

kmk