

IN THE SUPREME COURT OF FLORIDA

MARK SIEVERS,

Appellant,

v.

CASE NO. SC20-225
DEATH PENALTY CASE

STATE OF FLORIDA,

Appellee.

_____ /

**RESPONSE TO APPELLANT'S MOTION TO RELINQUISH
JURISDICTION TO TRIAL COURT FOR RECONSTRUCTION
OF RECORD & SECOND MOTION TO SUPPLEMENT THE RECORD**

COMES NOW, the State of Florida, by and through the undersigned Assistant Attorney General, and hereby responds to Appellant's Motion to Relinquish Jurisdiction to Trial Court for Reconstruction of Record & Second Motion to Supplement the Record, as follows:

1. Appellant requests that this Court relinquish jurisdiction to reconstruct the record so that a full video of the Curtis Wright interview be made part of the appellate record.
2. The State of Florida objects.
3. This Court has already relinquished jurisdiction to resolve any issues with the defense exhibits.
4. As a result of the relinquishment, a short video under six minutes in length of the Curtis Wright interview (Defense Exhibit 4A) has been made part of the supplemental record.

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5. During trial, Appellant's counsel sought to admit the exhibit of the short video clip to show bias. (T. 3897-3901). Counsel's legal argument for admission of the video was focused on the shorter "portion of the video" where Ms. Wright was referred to as a "blip," and that is exactly what has now been made part of the supplemental record. The record does not clearly indicate that Appellant's counsel ever sought to admit the entire full-length interview of Curtis Wright. (T. 3897-3901).

6. Appellant's appellate attorney claims that trial counsel's reference to an Exhibit 3 and 3A must have meant that counsel had both long and short Curtis Wright videos. Appellee does not contest that there was a long Curtis Wright video; rather, undersigned counsel questions whether that video was ever filed as a proposed defense exhibit. Defense counsel's reference to an Exhibit 3 and 3A certainly does not show that a long and short video were submitted, as there is no Exhibit 3A and Defense Exhibit 3 is not a video. While counsel did reference an Exhibit 3 and 3A when discussing the Curtis Wright video, counsel subsequently referred to the Curtis Wright video as Exhibit 2 (T. 3925), and ultimately filed the short Curtis Wright video as Exhibit 4A, and Exhibit 4 is a different video altogether (involving Taylor Shomaker, not Curtis Wright).

7. Nevertheless, even if counsel had both a long and short video as potential exhibits, the record does not indicate that *both* the long and short video were actually filed as proffered exhibits.

8. If Appellant's counsel did not file the long Curtis Wright video as a proffered defense exhibit, it should not now be made part of the Appellate record. See 9.200 (a) (1) Fla. R. App. P.

9. Lastly, while the full video of the Curtis Wright interview was never made part of the appellate record, the transcript of the full interview is contained within the record. (Supp. R. 3988-4148). The transcript memorializes everything discussed during the full-length Curtis Wright video.¹

10. For all these reasons, Appellee hereby objects to Appellant's motion for this Court to relinquish jurisdiction so that the full video of the Curtis Wright interview can be made part of the record. The transcript is already contained within the record, and the record does not show that a full video of the Curtis Wright interview was ever submitted as a proposed exhibit.

Appellee does not object to Appellant's remaining requests to supplement the record.

¹ It should finally be noted that the trial judge never watched any Curtis Wright video prior to sustaining the objection.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL
STATE OF FLORIDA

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COUNSEL FOR STATE OF FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of July, 2020, I electronically filed the foregoing with the Clerk of the Court by using the e-portal filing system which will send a notice of electronic filing to the following: Karen Kinney, Assistant Public Defender, 10th Judicial Circuit Public Defender's Office, P.O. Box 9000 - Drawer PD, Bartow, Florida 33830, **appealfilings@pd10.org, kkinney@pd10.org, kstockman@pd10.org**; Office of Criminal Conflict and Civil Regional Counsel, Second Floor, 2101 McGregor Blvd., Fort Myers, Florida 33901, **ineymotin@flrc2.org**; Office of Criminal Conflict and Civil Regional Counsel, P.O. Box 9000 - Drawer RC2, Bartow, Florida 33831, **appeals@flrc2.org**; and Cynthia Ross, Assistant State Attorney, P.O. Box 399, Fort Myers, Florida 33902-0399, **cross@sao.cjis20.org** and **ServicesSAO-LEE@sao.cjis20.org**.

/s/ Christina Z. Pacheco
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