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SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

May 26, 2015

V. Claire Allen, Deputy Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

RECEIVED  
MAY 26 2015  
SC Court of Appeals

Re: State v. Deshawn Powell  
Appellate Case No. 2012-212140

Dear Ms. Allen:

I received your letter dated May 21, 2015, requesting that I file a supplemental record on appeal to include all pretrial motions, jury qualification and *voir dire*, jury selection and the *Jackson v. Denno* hearing including the testimony of Lieutenant James Shumpert. Please find enclosed for filing a supplemental record on appeal containing jury qualification and *voir dire*. This was inadvertently omitted from the record on appeal. I apologize for the omission. When this office initially requested and received the trial transcript, this portion was not included. As a result, on August 28, 2013, I asked that this Court place the case in abeyance and requested the transcript of jury selection. There was a substantial delay in receiving the requested transcript. The transcript we finally received on May 15, 2014, included jury qualification/*voir dire*. The transcript received, however, did not include jury selection. The court reporter notes, "Nothing further concerning this case on this cassette tape." (Supp. R. p. 29).

I contacted trial counsel Peggy Hinds who advised that there were no issues in regard to the selection of the jury and no objection made to the jury. Based on the already substantial delay and the fact that trial counsel advised there were no objections made during the selection of the jury, I did not move to reconstruct the record of jury selection.

I am unaware of any pre-trial motions that were held in this case. The *Jackson v. Denno* hearing, held outside of the presence of the jury, was conducted prior to the trial testimony of Lieutenant James Shumpert. (R. pp. 171-183). It appears, however, that Lieutenant Shumpert's testimony during the *Jackson v. Denno* hearing was not transcribed. The court reporter notes, "WHEREUPON, according to the log sheet of the court reporter, Lieutenant James Shumpert testified at this time. However, there is no audio recording for the testimony." (R. p. 171 lines

8-10). Appellant's testimony during the *Jackson v. Denno* hearing was transcribed. (R. pp. 171-179). The judge found that the Appellant made a voluntary statement after being *Mirandized*. (R. p. 179, lines 20-25). Lieutenant Shumpert then testified before the jury in regard to *Miranda* warnings given to Appellant and the statement Appellant made. (R. pp. 198 – 202). Lieutenant Shumpert's testimony before the jury was transcribed. Appellant renewed his objection to the admission of the statement and the judge overruled the objection. (R. p. 201, lines 18-24). Based on Lieutenant Shumpert's testimony before the jury, I did not move to reconstruct the record of his testimony during the *Jackson v. Denno* hearing.

With the filing of the supplemental record on appeal I have provided the Court with all transcripts available at this time. I determined that a reconstruction hearing was not necessary for purposes of the direct appeal in regard to jury selection and the testimony of Lieutenant Shumpert during the *in camera Jackson v. Denno* hearing. Based on my conversation with trial counsel, there was no objection made during the selection of the jury so any issue in regard to the jury was waived for appellate review. Any issue in regard to Appellant's statement can be reviewed based on Lieutenant Shumpert's trial testimony. I hope this addresses the Court's concerns. If you have any question, please do not hesitate to contact me.

Sincerely,



Kathrine H. Hudgins  
Appellate Defender

KHH/rrb