



Docket -  
Apr. 21

**MISSOURI STATE PUBLIC DEFENDER SYSTEM**  
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March 4, 2004

Ms. Christina Vinson  
Deputy Clerk, Court en Banc  
The Missouri Supreme Court  
P.O. Box 150  
Jefferson City, MO 65102

RECEIVED

MAR 08 2004

CLERK OF COURT  
MISSOURI SUPREME COURT

Re: State v. Carman Deck, SC# 85443

Dear Ms. Vinson:

I represent Carman Deck in his appeal from his penalty phase retrial. Mr. Deck would like to waive the first portion of Argument IV in the Appellant's Brief. The transcript indicated that Instruction 2, although given to the jury in writing, was not read to the jury as required. When counsel double-checked, the court reporter could not verify one way or the other prior to the filing deadline for Appellant's brief. As a result, counsel included the issue in the brief to be on the safe side. Since then, however, the court reporter has advised that the instruction was in fact read to the jury.

Because the instruction apparently was given to the jury orally, as required, Mr. Deck waives Argument IV(A), "Court's Failure to Read Instruction No. 2" (pages 87-92). He does not wish to waive the second half of Argument IV (B), "Repeated Failure to Read the Cautionary Instruction" (pages 92 -95).

Thank you for bringing this matter to the Court's attention.

Sincerely,

  
Rosemary E. Percival  
Assistant Appellate Defender

cc: Evan Buchheim, Assistant Attorney General