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SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

August 6, 2013

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

AUG 06 2013

SC Court of Appeals

Re: State v. Wallace E. Evatt, Jr., Appellate Case No. 2012-212616

Dear Ms. Kitchings:

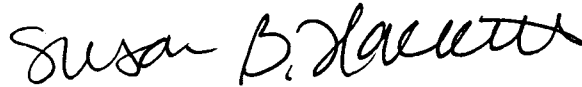
The initial brief of appellant and designation of matter in the above case is due to be served and filed on August 19, 2013. Mr. Evatt was convicted of the murder of Karen Rojas. The defense claimed Ms. Rojas committed suicide. A gun and a holster were recovered from the scene. A firearms expert testified that he could not exclude the recovered gun as being the gun that fired the projectile recovered from the scene.

We have discovered that the transcript is incomplete concerning the testimony of David Gross. The state called Gross to testify. This occurred on page 304 of the transcript. During Gross's testimony, Appellant objected to the state introducing a photograph of the alleged victim as victim impact evidence. The trial court addressed the objection and ruled the photograph inadmissible. This occurred outside the jury's presence on page 305 of the transcript. The transcript indicated the jury then entered the court room. **On the top of page 306, there is a Transcriber's Note, which reads "Recording of this witness' testimony on cross examination was in progress on the digital recording."** The transcript then shows a portion of the cross-examination. It is clear from the context that this is not the beginning of the cross-examination. It is also unlikely that the entire direct examination is included in light of the very brief direct examination provided. Additionally, the state and the defense make reference to Gross's testimony in their closing arguments when discussing how and why Ms. Rojas had the gun.

I have written to the court reporter today requesting clarification regarding the transcriber's note and asking if the testimony is available through a back-up recording device or any other mechanism. I am enclosing a copy of my letter for your review.

I request that the time limits be held in abeyance pending receipt of a response from the court reporter and/or the transcript. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Susan B. Hackett". The signature is written in a cursive, flowing style.

Susan B. Hackett
Appellate Defender

SBH/eab

Enclosures: Letter to Court Reporter
Transcript pages 304-307

cc: Donald J. Zelenka (w/enclosure)
Evatt E. Wallace, Jr. (w/ enclosure)

1 Ms. Salisbury: The State calls Mr. David Gross.

2 **DAVID GROSS**, duly sworn, testified as follows:

3 Clerk of Court: Please state your name for the record.

4 A David Gross.

5 Clerk of Court: Thank you. You may be seated.

6 **DIRECT EXAMINATION BY MS. SALISBURY:**

7 Q Good morning, Mr. Gross.

8 A Good morning.

9 Q Where do you live?

10 A Easley.

11 Q How long have you lived there?

12 A About twenty year.

13 Q Do you work there?

14 A I work at Cryovac.

15 Q What was your relationship with Karen Rojas?

16 A Karen's my sister. We was real close. We did everything together. We always had a
17 real close relationship. She was close to both of my sons. Karen, she....

18 (defendant tearful and sobbing)

19 Ms. Manigault: Your Honor, may we approach? I believe the jury needs to be excused.

20 The Court: Take the jury out.

21 (whereupon the jury exited the courtroom)

22 Yes ma'am?

23 Ms. Manigault: I've been shown a picture by the State. I don't know where they're going
24 with this.

1 Ms. Salisbury: Your Honor, I just had State's Exhibit Number 48, which is a picture of Ms.
2 Rojas.

3 The Court: Okay.

4 Ms. Salisbury: The victim's family brought this in for consideration to show the
5 court the impact that Ms. Rojas' death has had on the family.

6 The Court: You're going to do what, now?

7 Ms. Salisbury: Well, Judge, the testimony the jury's heard thus far is a lot of, a lot of
8 it is about the incident and not so much about the life of the victim. The purpose of this
9 testimony is to talk about the effect that this incident has had on the family, and I believe that
10 it's appropriate---

11 The Court: No, I'm not going to let that in. It has no relevance.

12 Ms. Salisbury: That's fine, Judge. But the only pictures the jury has seen thus far
13 have been pictures of the crime scene and this is a photograph of the victim as she appeared
14 before that day.

15 The Court: What relevance does that have to the issue of whether it was a murder or
16 a suicide?

17 Ms. Salisbury: Judge, it's certainly not part of the facts and the investigation of the
18 case, but, nonetheless, it's the State's belief that---

19 The Court: No, I'm not gonna allow that.

20 Ms. Manigault: Thank you, Your Honor.

21 The Court: Bring the jury in.

22 (whereupon the jury entered the courtroom)

23

24

25

1 (Transcriber's Note: Recording of this witness' testimony on cross examination was in progress
2 on the digital recording)

3 **CROSS EXAMINATION BY MS. MANIGAULT:**

4 Q When'd you make that purchase?

5 A I don't remember the date.

6 Q Was it in 2009, 2008, 2007?

7 A I believe it was in 2008.

8 Q 2008. You testified that she used to live in Toccoa, Georgia?

9 A Yes.

10 Q Did she own a gun when she lived there also?

11 A Yes.

12 Q And that was for protection, you said?

13 A Yes.

14 Q And did you purchase a holster with the gun?

15 A Yes.

16 Q So, you gave her the gun with the holster?

17 A Yes.

18 Q State's Exhibit Number 9 and 10, that's the gun and holster you gave to her?

19 A Yes.

20 Q And you say you talked a lot and you saw her about five days the weekend before?

21 A Yes.

22 Q And you said she was normal, crazy, sense of humor, something about a sense of
23 humor.

24 A She had a good sense of humor.

25 Q She like to pull pranks?

1 A She like to teach my sons pranks and stuff.

2 Q Thank you.

3 The Court: Thank you. You may step down.

4 Ms. Salisbury: Your Honor, may we approach?

5 The Court: Sure.

6 (whereupon a bench conference took place)

7 Ms. Salisbury: The State calls Tracy King.

8 **TRACY KING**, duly sworn, testified as follows:

9 Clerk of Court: Please state your name for the record.

10 A Tracy King.

11 Clerk of Court: Thank you. You may be seated.

12 **DIRECT EXAMINATION BY MS. SALISBURY:**

13 Q Investigator King, where you work?

14 A Greenville County Sheriff's Office.

15 Q What's your capacity at the sheriff's office?

16 A I work in the armed robbery unit.

17 Q How long have you been with armed robbery?

18 A Three years.

19 Q As part of your duties as an investigator for the sheriff's office, do you routinely
20 assist other investigators in their cases where needed?

21 A We do, on an on-call status.

22 Q Do you remembering becoming involved in this particular investigation?

23 A I do.

24 Q How did that happen?



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AUG 06 2013

Ms. Phyllis S. Barrett
Circuit Court Reporter
P.O. Box 642
Rock Hill, SC 29731-0642

SC Court of Appeals

Re: State v. Wallace E. Evatt, Jr., Appellate Case No. 2012-212616

Dear Ms. Barrett:

I represent Wallace Evatt in his direct appeal to the South Carolina Court of Appeals. While preparing for his appeal, I discovered the transcript is incomplete. On page 306 of the transcript, there is a note stating "Transcriber's Note: Recording of this witness' testimony on cross examination was in progress on the digital recording." I require clarification of what this note means. For Mr. Evatt's appeal, I need the entire testimony of the witness, David Gross. Is this testimony available through a back-up recording device or other mechanism? Do you have any notes concerning what transpired?

I appreciate your prompt attention to this matter. I am copying my client, the Court of Appeals, and the Attorney General's Office on this correspondence. I am also copying April Herron because it is my understanding that Ms. Herron was the court reporter for the proceedings. My file indicates that all of our requests for the transcript were sent to Ms. Herron. The Court's website also indicates Ms. Herron was the court reporter assigned to Judge Pyle for Mr. Evatt's trial. My best guess is that you transcribed the proceedings based upon Ms. Herron's recording(s).

Please contact me if you have questions or concerns regarding this matter. I look forward to hearing from you soon concerning the remaining portion of the transcript of Mr. Evatt's trial.

SIGNATURE ON FOLLOWING PAGE

Sincerely,

A handwritten signature in cursive script that reads "Susan B. Hackett". The signature is written in black ink and is positioned above the typed name.

Susan B. Hackett
Appellate Defender

SBH/eab

cc: Wallace E. Evatt, Jr.
Court of Appeals
Donald J. Zelenka
April Herron