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Sep 10 2024

SC Court of Appeals



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

September 10, 2024

The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
1220 Senate Street
Columbia, S.C. 29201

Re: The State v. Emeric Hamilton Appellate Case No. 2023-001884

Dear Ms. Kitchings:

Pursuant to this Court's order remanding the matter, I am providing this update on the progress of attempting to reconstruct the record. Following a status conference with Judge Jennifer McCoy and all counsel on September 4, 2024, a reconstruction hearing has been set in the above matter for December, though the actual dates for the hearing are still being settled. In the interim, Judge McCoy has requested a more detailed explanation for the missing portions of the transcript and has issued an order requesting a written response from Legal Eagle, a copy of which is attached to this correspondence. By copy of this letter, I am serving counsel for Respondent with a copy of this communication with the Court.

If you have any questions or concerns, please do not hesitate to contact me.

Respectfully,

A handwritten signature in blue ink, appearing to read "Gary H. Johnson", is written over a horizontal line. The signature is stylized and somewhat illegible.

Gary H. Johnson
Appellate Defender

GHJ/sep

Enclosures

cc: Mark R. Farthing, Esquire
Ben Aplin, Esquire
Emeric Hamilton



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September 9, 2024

Kevin Dehlinger
Director of Operations, Legal Eagle
107 LeGrand Blvd.
Greenville, SC 29607

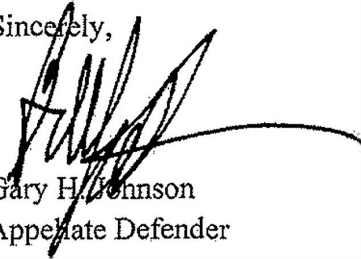
Re: The State v. Emeric Hamilton, Appellate Case No. 2023-001884

Dear Mr. Dehlinger:

Attached please find an order from Judge McCoy directing that we request Legal Eagle verify that location and recovery of the missing portions of the transcript have been attempted and are now no longer available for transcription in connection with the above referenced matter under the provisions of Rule 607, SCACR. Due to the number of matters missing from the transcript, Judge McCoy is requesting written verification that Legal Eagle has reviewed all of its material associated with this trial and can provide no additional material to the corrected transcript produced on March 8, 2024. We do note that some of the missing material was available contemporaneous to trial, as it was played back for the jury as outlined in the Order. Please review the material you have related to this trial and provide a written response with as much detail as possible regarding the steps taken within the next thirty (30) days so I may forward the information to Judge McCoy.

If you need any additional details on what additional material is still missing, please reach out to me.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary H. Johnson", with a long horizontal flourish extending to the right.

Gary H. Johnson
Appellate Defender

GHJ/sep

cc: The Honorable Jennifer B. McCoy
Lauren M. Frierson, Esquire
Nick Harris, Esquire
Mary Ford, Esquire
Mark Farthing, Esquire
John B. Aplin, Esquire
South Carolina Court of Appeals
Tammie Holmes, Court Administration
Della White

2. There is another break in the transcript on November 28, 2023, following the lunch recess at 12:08 p.m. with instruction to return at 1:30 p.m. See Transcript page 137. However, the transcript does not resume until the afternoon of November 29, 2023, during the charge conference and jury charge. See Transcript page 139. Numerous witnesses testified during this missing period and are not transcribed except for testimony that was “read back” to the jury after deliberations started on November 29, 2023, by Christie Harley, Marianne Boehm, and Verona Herrera beginning on page 191 of the transcript (this is during jury deliberation and not when the witnesses testified during trial).

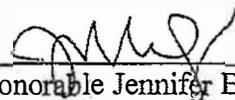
3. In comparing the exhibits on file with the Charleston County Clerk of Court with the produced transcripts, admission and argument concerning the following exhibits are omitted from the record:

4. There is a general absence of time notations regarding jury deliberations. There is no time noted when deliberations began. There is no time noted for the first jury question and response from the Court. There is no time noted for the *Allen* charge and when the final verdict is returned.

The Defendant is hereby ordered to supply a copy of this order to Legal Eagle with a written challenge under Rule 607, SCACR, requesting that Legal Eagle complete a review of all available recording medium to determine if the large portions of the trial that have been omitted are available for transcription. Legal Eagle is requested to provide as complete an explanation for the missing portions of the transcript as possible with notice that such explanation shall be supplied to this Court to determine if additional steps are required to verify whether the omitted material and can be transcribed or if a reconstruction hearing is required. Since some of the material omitted from the transcript was played back for the jury during deliberations, a complete recording may have existed at the time of trial. Legal Eagle should make every attempt to determine if these missing

portions of the hearing have been retained and can be retrieved from its systems for transcription. Counsel for Defendant shall file the Rule 607, SCACR, challenge directed by this Order within ten (10) days of the date of this Order and shall report on the response from Legal Eagle within thirty (30) days of service of the Order and challenge on Legal Eagle.

And it is so Ordered.



The Honorable Jennifer B. McCoy
Circuit Court Judge
100 Broad Street, Suite 348
Charleston, S.C. 29401

September 6, 2024.

FILED

2024 SEP -6 PM 1:11

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____