

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Larry B. Hyman, Jr. Circuit Court Judge

RECEIVED

SEP 27 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

SEBASTIAN JAMES HEPBURN,

APPELLANT

Appellate Case No. 2012-213403

PETITION FOR ORDER TO RECONSTRUCT
THE RECORD OF APPELLANT'S
TRIAL TRANSCRIPT OR IN THE ALTERNATIVE
AN ORDER SETTING ASIDE HIS CONVICTIONS
AND ORDERING A NEW TRIAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order requiring the parties to reconstruct the record of post trial motions, closing arguments, pronouncement of verdict and sentencing from Appellant's trial held on November 8, 2012, before the Honorable Larry B. Hyman, Jr. in Greenville County. In the alternative, counsel for Appellant requests an order setting aside the conviction and ordering a new trial.

In accordance with Rule 240(c), SCACR, counsel submits the following documents to support his motion: the index from the trial transcript indicating that the post trial motions, closing arguments, pronouncement of the verdict and sentencing by

the Court were not transcribed (Exhibit #1); page 237 of the trial transcript stating, “Post-trial Motions, Closing Arguments, Verdict and Sentencing of the Court are unretrievable due to equipment malfunction that occurred after the conclusion of the proceedings.” (Exhibit #2); and the certificate from the court reporter (Exhibit #3).

When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007). Important portions of appellant’s trial transcript have been lost and are no longer available through no fault of appellant. The court reporter indicates that the equipment malfunctioned. (Exhibit #2). Meaningful review of the record below is not possible with the current transcript omitting post trial motions, closing arguments, pronouncement of verdict and sentencing. Appellant seeks reconstruction of those portions of the record to permit meaningful appellate review of his trial.

In the alternative, appellant requests this Court set aside his conviction and sentence and remand for a new trial because the transcript fails to permit meaningful review. In Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983), the defendant’s convictions were set aside and a new trial had where the court reporter’s equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. Citing Deaton, this Court denied a request for reconstruction in State v. Serrette, 375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007) where the reason for the lack of transcript was due to the defendant’s absence for a ten-year period;

which this Court explained was “not a situation where the court reporter’s equipment malfunctioned at trial leading to a loss of the trial transcript.” Appellant in the present case was not at fault for the absence of portions of his trial transcript. The court reporter indicates the omission was due to equipment malfunction. Appellant requests this Court order a new trial in his case.

Counsel respectfully requests an order for the reconstruction of the missing portions of appellant’s trial transcript in order to perfect the direct appeal in the case. In the alternative, counsel requests this Court set aside the conviction and remand for a new trial. **While this petition is pending, Appellant asks this Court to hold the timelines for filing his initial brief and designations in abeyance.**

Respectfully submitted,



Kathrine Haggard Hudgins, S.C. Bar #65321
Appellate Defender
South Carolina Commission on Indigent Defense
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September 27, 2013

I N D E XDIRECT CROSS REDIRECT RECROSS

November 8, 2012

Ashley Wright

by Ms. Bentley 166

by Mr. Ray 172

by Ms. Bentley 179

Motions 180

Sebastian Hepburn

by Mr. Ray 182

by Ms. Bentley 225

by the Court 231

by Mr. Ray 235

Motions (Not transcribed)

Closing argument

by Ms. Bentley (Not transcribed)

by Mr. Ray (Not transcribed)

Verdict (Not transcribed)

Sentencing of the Court (Not transcribed)

Certificate of Reporter 238

1 back, your clothes gonna be out.

2 Q What about Keiara?

3 A Keiara was in the room. Then when I came back
4 to get my hat, Jackie was in Keiara room. That's when I
5 heard Keiara crying.

6 Q All right.

7 A That's when the allegations started.

8 Q That's the first time you heard Keiara crying?

9 A That's the first time I heard her crying.

10 MR. RAY: Nothing further, Your Honor.

11 MS. BENTLEY: No redirect, Your Honor.

12 THE COURT: All right. You can step down.

13 All right. Stand aside please. We have a
14 verdict in this other case.

15 (WHEREUPON, a recess is taken from approximately
16 11:05 a.m. to 11:18 a.m.)

17 (WHEREUPON, the following portions: Post-trial
18 Motions, Closing Arguments, Verdict and Sentencing of the
19 Court are unretrievable due to equipment malfunction that
20 occurred after the conclusion of the proceedings.)

21 (WHEREUPON, the proceedings conclude at
22 approximately 11:37 a.m.)

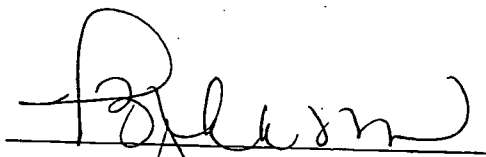
23

24

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 23rd day of February, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.



Teresa B. Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Larry B. Hyman, Jr. Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SEBASTIAN JAMES HEPBURN,

APPELLANT

Appellate Case No. 2012-213403

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the petition for order to reconstruct the record of Appellant's trial transcript or in the alternative an order setting aside his convictions and ordering a new trial in the above referenced case has been served upon Salley Elliott, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, and Mr. Sebastian James Hepburn, #353163 Turbeville Correctional Institution PO Box 252 Turbeville, SC 29162 , this 27th day of September, 2013.



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 27th day of September, 2013.

_____(L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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

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SEP 27 2013

SC Court of Appeals

September 27, 2013

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

Re: State v. Sebastian James Hepburn
Appellate Case No. 2012-213403

Dear Ms. Kitchings,

Enclosed please find the original and six copies of the petition for order to reconstruct the record of Appellant's trial transcript or in the alternative an order setting aside his convictions and ordering a new trial in the above case.

If you have any questions concerning this matter, please contact me.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/dlw

Enclosures