

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW)	
)	Appellate Case No. 2022-001458
State of South Carolina,)	Case Nos. 2012-GS-28-1241; 1242; 1243 and
)	2013-GS-28-831; 832
Respondent,)	
)	ORDER FINDING RECORD CANNOT BE
v.)	RECONSTRUCTED
)	
James Walter Owens,)	
)	
Appellant.)	

This matter is before this Court on remand from the Court of Appeals. The Court of Appeals granted appellant James W. Owens' Motion to Remand to Reconstruct the Record. On February 11, 2025, this Court held a hearing and now makes the following findings of fact and conclusions of law:

1. Owens was indicted by a Kershaw County grand jury for first degree criminal sexual conduct with a minor, two counts of lewd act on a minor child, and two counts of degree criminal sexual conduct with a minor. The allegations in the indictments concerned three victims.
2. On September 16, 2013, Owens was tried before this Court and a jury. The trial lasted five days, until September 20, 2013. The jury convicted Owens and this Court sentenced Owens to an aggregate of twenty-five years' imprisonment.
3. At the trial, Owens was represented by Jason D. Kirincich. Nicole Simpson and Kathryn Cavanaugh represented the State.
4. On September 20, 2013, defense counsel for Owens filed a Motion for New Trial which was denied on September 27, 2021. Owens timely filed a notice of appeal.

5. Appellate Defense assumed representation of Owens and ordered the trial transcript, but was informed by the court reporter and Court Administration that the recordings of the trial did not exist. After remand, appellate counsel for the State initiated another investigation with Court Administration that ultimately found no recordings.
6. The solicitor who was first chair in the case, Ms. Simpson, is deceased. The second chair solicitor, Ms. Cavanaugh, testified at the hearing that she has little recollection of the trial and does not believe it can be reconstructed.
7. Mr. Kirincich testified that he does not have his notes, which in any event would be limited because he was the sole attorney trying the case. Mr. Kirincich does not recall all of the objections and rulings from the trial and does not believe it can be reconstructed. His motion for a new trial did not contain all of the objections and rulings made during the course of this long trial.
8. The Court finds the testimony of Ms. Cavanaugh and Mr. Kirincich credible on the inability to reconstruct this record.
9. The Court remembers the trial, but does not recall the testimony or rulings with anything like the detail necessary to reconstruct this record. The Court does not have its own notes from the trial.
10. At the hearing, Benjamin Aplin from the Attorney General represented the State and David Alexander from Appellate Defense represented Owens. Before taking testimony from the trial lawyers, both sides informed the Court they did not believe this record could be reconstructed. The Attorney General indicated at the beginning of the hearing that it may pursue a claim of laches against Mr.

Owens for failing to order the trial transcript during the pendency of the new trial motion. At the conclusion of testimony, the Attorney General stated it did not intend to push the issue of laches and agreed that the case for this equitable doctrine was not strong. Owens argued that the State could have lost the motion for a new trial and, to the extent that any duty to order a transcript during the pendency of the motion existed, the State was in an equal or better position to do so given its resources and the fact that it could have been the appellant. The Court appreciates the candor of the Attorney General and finds that the State did not meet its burden of proof for showing laches.

11. Both Mr. Kirincich and Ms. Cavanaugh credibly testified that Owens' motion for a new trial was not a "run of the mill" motion confined solely to the trial record. The motion required additional investigation of two issues. First, a clerk with the solicitor's office entered the jury room during deliberations to assist with a computer. Both lawyers agreed that discovering exactly what happened in the jury room contributed significantly to the delay in ruling on the motion and this Court so finds. The investigation revealed that nothing improper occurred and the Court denied the motion for a new trial on this ground, but it was necessary to ascertain exactly what happened so that the Court could rule.
12. Trial counsel also both testified that one of the complainants gave a post-trial statement that required further investigation and delayed the ruling on the motion. Mr. Kirincich credibly testified that the complainant's post-trial statement was the basis for his ground number four in his motion for a new trial

and the statement in this Court's Order denying the motion that "The defense and prosecution both conducted in and participated in additional investigation, but no additional evidence has been produced that would warrant a nullification of the jury's verdict and the granting of a new trial." Mr. Kirincich recalled that the sheriff re-interviewed the complainant and he recalled attending that interview. This Court finds this investigation also contributed to the delay in ruling on the motion.

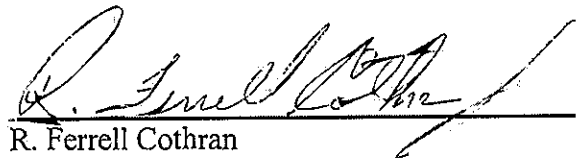
13. Without even a partial transcript, with the untimely death of the solicitor, the passage of nearly twelve years, the length of this five-day trial, and the number of victims, this Court finds that it would be impossible to reconstruct this record. The transcript was not due to be ordered until the commencement of the appeal. This Court finds no fault on the part of Owens or the State and concludes that the inability to reconstruct this record is an unfortunate confluence of events.
14. The Court also finds that the parties have made a good faith attempt at the task of determining whether this record can be reconstructed. "South Carolina jurisprudence recognizes the trial court's authority to set the record for appeal." State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). No evidence is before this Court that the record can be reconstructed and the Court concludes that such a reconstruction would be impossible.

THEREFORE, IT IS ORDERED that the record on this case cannot be reconstructed. As the reason for the appellate court's remand is now complete, Counsel for appellant is ordered to file this Order with the Clerk of Court for Kershaw County and

with the Court of Appeals within ten (10) days of receipt and upon doing so, jurisdiction in the Circuit Court shall be extinguished.

IT IS SO ORDERED.

February 19, 2025


R. Ferrell Cothran
Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Kershaw County
Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

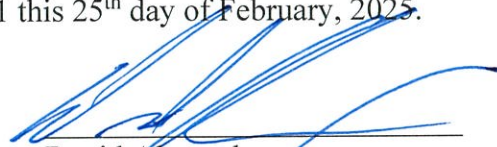
JAMES W. OWENS,

APPELLANT

Appellate Case No. 2022-001458
Lower Court Case Nos. 2012-GS-28-1241; 1242; 1243 and
2013-GS-28-831; 832

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true copy of the Order Finding Record Cannot Be Reconstructed in the above-referenced case has been served upon Benjamin J. Aplin, Esquire and Curtis A. Pauling, III, Esquire, at the primary e-mail addresses listed in the Attorney Information System (AIS); and filed with the Kershaw County Clerk of Court, The Honorable Ginger Farmer, via email filing to ginger.farmer@kershaw.sc.gov and via United States Mail, postage prepaid, addressed to PO Box 1557, Camden, SC 29021 this 25th day of February, 2025.



David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

From: [Stock, Chris](#)
To: ginger.farmer@kershaw.sc.gov
Cc: pauling.curtis@richlandcountysc.gov; [Ben Aplin](#); susanspencer@scag.gov; RCothranlc@sccourts.org; [Ralph F. Cothran Jr.](#); jdkirincich@gmail.com; [Alexander, David](#); mfarthing@scag.gov; [SC - COLLINS CAROLINE](#)
Subject: 2022-001458 - State v James Owens - Order from Judge Cothran
Date: Tuesday, February 25, 2025 12:24:00 PM
Attachments: [2022-001458 - State v James Owens - Order from Judge Cothran.pdf](#)

Good afternoon,

Please find attached for filing the Order Finding Record Cannot Be Reconstructed in the matter of The State v. James Walter Owens (Case Nos. 2012-GS-28-1241; 1242; 1243 and 2013-GS-28-831; 832). This Order is also being filed, along with a Motion for a New Trial, with the Court of Appeals this afternoon.

Counsel for the State is copied on the email.

If you have any questions, please let me know.

Thank you,

Chris Stock
Administrative Coordinator
Commission on Indigent Defense
Appellate Division
(803) 734-1330