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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

November 21, 2013

RECEIVED

NOV 21 2013

SC Court of Appeals

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

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

Dear Ms. Barrett:

I wrote to you on August 6, 2013 regarding the above-referenced case. I have enclosed a copy of that letter and its enclosures for your convenience. According to my records, I have not heard from you. It is necessary that I have the complete testimony of David Gross from the trial in order to represent Mr. Evatt in his direct appeal. If the transcript is not available, please advise me of such so that I may ask the Court of Appeals to remand the case for reconstruction.

A review of the existing transcript of David Gross indicates a substantial portion is missing. Five questions were asked during direct examination prior to the jury being excused for the parties to litigate the admissibility of a photograph. After the photograph issue is dealt with, the transcript picks up with the cross examination of Gross. The first question is "when'd you make that purchase?" There is nothing to indicate to what "that" is referring. The third question is "You testified that she used to live in Toccoa, Georgia?" However, the transcript contains no indication of testimony of that nature.

I appreciate your prompt attention to this matter as the Court of Appeals has written to me inquiring about the status of the transcript. 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).

I am also enclosing the cover page from the transcript and the court reporter's certificate in the event the pages assist you in locating the missing portion of the transcript.

Mr. Evatt was tried before the Honorable C. Victor Pyle, Jr. during the week of July 16, 2012 in Greenville County. His indictment number was 2009-GS-23-9628. Please contact me if you have questions or concerns regarding this matter.

Sincerely,



Susan B. Hackett
Appellate Defender

SBH/

cc: Wallace E. Evatt, Jr. (w/ enclosures)
Clerk of Court, Court of Appeals (w/ enclosures)
Donald J. Zelenka, Esquire (w/ enclosures)
April Herron (w/ enclosures)

Enclosures: August 6, 2013 letter to Barrett and enclosures
Transcript cover page
Court reporter's certificate



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

August 6, 2013

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

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

Dear Ms. Barrett:

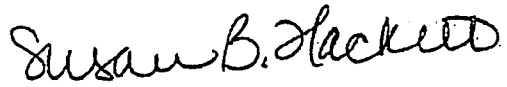
I represent Wallace Evatt in his direct appeal to the South Carolina Court of Appeals. While preparing for his appeal, I discovered the transcript is incomplete. On page 306 of the transcript, there is a note stating "Transcriber's Note: Recording of this witness' testimony on cross examination was in 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".

Susan B. Hackett
Appellate Defender

SBH/eab

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

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?

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
:)
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
:)
PLAINTIFF,)
:)
VERSUS) TRANSCRIPT OF RECORD
:)
WALLACE E. EVATT, JR.,) 2009-GS-23-09628
:)
DEFENDANT.)

VOLUME I
JULY 16, 2012

B E F O R E:

THE HONORABLE VICTOR C. PYLE, JR., JUDGE, AND A JURY

A P P E A R A N C E S:

FOR THE STATE:
KIMBERLY HOWARD, ESQ., ASSISTANT SOLICITOR
KATRYNA SALISBURY, ESQ., ASSISTANT SOLICITOR

FOR THE DEFENSE:
DOROTHY MANIGAULT, ESQ.

PHYLLIS BARRETT, COURT REPORTER

Certificate

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I, Phyllis S. Barrett, Court Reporter, do hereby certify that the foregoing is a true, accurate and complete transcript of the testimony and evidence given in the trial of the captioned matter on July 16, 17, 18, and 19, 2011, in the Court of General Sessions of the Thirteenth Judicial Circuit, Greenville County, South Carolina.

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

PHYLLIS S. BARRETT