

RECEIVED

Aug 03 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2026-000664

THE STATE,

Respondent,

vs.

RENEE LAVONNE SIMON,

Appellant.

**RETURN TO
MOTION FOR A NEW TRIAL**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

In December of 2022, Appellant Renee Lavonne Simon was arrested after she shot another person in the back. In May of 2024, the Pickens County Grand Jury indicted Simon for attempted murder and possession of a weapon during the commission of a violent crime. On February 23, 2026, a jury trial was commenced in the Pickens County Court of General Sessions with the Honorable R. Lawton McIntosh, circuit court judge, presiding. At the conclusion of the four-day trial, the jury convicted Simon as indicted. Following the verdict, the trial judge sentenced Simon to concurrent terms of imprisonment of twenty years for attempted murder and five years for possession of a weapon during the commission of a violent crime. Simon then

timely filed a notice of appeal. At present, Simon’s appeal currently remains pending before this Court.¹

II.

On appeal, Simon—through appellate counsel—filed a motion on July 24, 2026, seeking the grant of a new trial. As support for that extraordinary relief, Simon maintains there are a “great number” of transcript deficiencies that purportedly impact “every single potential appellate issue” along with the testimony of all the “important” witnesses. In Simon’s view, there are potentially five issues of merit contained within the 574-page transcript from her four-day trial, but she believes she is unable to properly assess the viability of those issues due to the “complete and total deficiency of th[e] transcript,” which currently contains 194 instances of “unintelligible,”² 50 instances of “inaudible,”³ 24 instances of “background noise,” a single

¹ Even though her appeal is still pending, Simon has already filed a pro se application for post-conviction relief. Records for Renee Simon, Pickens County Thirteenth Judicial Circuit Public Index, <https://publicindex.sccourts.org/pickens/publicindex/>.

² As an example of the nature of those instances of “unintelligible,” one occurred along with two instances of “inaudible” in connection to what appears to have been a brief audible disruption caused by the trial judge’s watch. (Tr. p. 55). Another occurred when the trial judge was discussing what Rule 609(a)(1) of the South Carolina Rules of Evidence stated, and yet another occurred shortly after that when the trial judge referenced some sort of factors just after discussing the seminal decision of State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000). (Tr. p. 17; p. 19). One more instance of “unintelligible” occurred during a discussion about pre-marking exhibits while another occurred in the context of controlling the courtroom’s lights. (Tr. p. 89; p. 246). Two more instances occurred when a witness was simply providing background information about his career as a firefighter. (Tr. p. 90). After that, two more occurred during an answer to a question asking for a particular exhibit to be identified just before that exhibit was admitted into evidence without objection. (Tr. pp. 183-184).

³ A number of the instances of “inaudible” occurred during a particular witness’s responses to questions about the contents of recordings that were admitted into evidence, were played for the jury, and are currently available for review. (Tr. pp. 270-277).

instance of “technical difficulty,”⁴ and 122 instances of “simultaneous speaking.” Based on that, Simon contends any attempt at reconstruction would be “futile” and a waste a judicial resources. Thus, Simon self-servingly maintains the jury’s unanimous guilty verdicts should be cast aside, her convictions should be summarily vacated without her having to establish that even a single error—prejudicial or otherwise—occurred during trial, her twenty-year sentence should be tossed out, her victim and all the other witnesses who previously testified should be haled back into court, and the costs associated with bringing her to trial should again be born by our state and its citizenry without even *attempting* to try to reconstruct the limited snippets missing from the transcript in its present form.

However, in seeking such extraordinary relief, Simon does *also* candidly concede she—not unsurprisingly—was unable to find any cases “where this Court has granted a new trial without first attempting to reconstruct the record.” As a result, Simon alternatively proposes her case be remanded to the circuit court to allow for reconstruction of the missing portions of the record in the event a new trial is *not* outright granted.

III.

When portions of a trial transcript are lost or unable to be transcribed, an appellate court can properly remand the matter to the trial judge for the purpose of attempting to reconstruct the record of the trial proceedings. See Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) (“Where a transcript has been lost or destroyed, a court may remand to have the record reconstructed.”), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494

⁴ The single instance of “technical difficulty” along with one of the instances of “background noise” occurred during an answer to a question on cross-examination related to whether the witness had been a detective for five years. (Tr. p. 290). Notably, prior to that point, the same witness had already thoroughly and clearly detailed his law enforcement background, leaving little doubt about whether he had, in fact, been a detective for five years as was assumed in the question posed to him. (Tr. pp. 247-248).

(2005); Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 2003 (2002) (remanding a case to the circuit court for reconstruction of the trial record); China v. Parrott, 251 S.C. 329, 334, 162 S.E.2d 276, 278 (1968) (“The issues on appeal must . . . be determined on the basis of the record as settled by the trial court.”); see also Adams v. H.R. Allen, Inc., 397 S.C. 652, 656, 726 S.E.2d 9, 12 (Ct. App. 2012) (“Where portions of stenographic notes are lost prior to transcription, it is appropriate for the judge to accept affidavits of counsel and the court reporter to determine what transpired.”). Significantly, “[t]he authority of the trial court in South Carolina to reconstruct the record for appellate purposes aligns our state with the majority of jurisdictions that hold the inability to prepare a complete verbatim transcript, in and of itself, *does not necessarily present a sufficient ground for reversal.*” State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007) (emphasis added and citations and internal quotation omitted)). Instead, the grant of a new trial is appropriate only when a reconstructed record does not allow for meaningful appellate review, and the appellant bears the burden of establishing “*specific* prejudice flowing from an incomplete or reconstructed record” before a new trial will be granted. Id. at 324-325, 644 S.E.2d at 273-274 (emphasis added).

IV.

With those principles in mind, there are approximately 391 instances in the 574-page transcript from Simon’s trial that suggest various limited portions of the proceedings have so far been unable to be fully and accurately transcribed. In light of that, a remand for reconstruction would be appropriate and reasonable to determine what is presently missing from the transcript in its current form. Therefore, this Court should do just as our state’s appellate courts have historically done when confronted with such circumstances and grant a limited remand for

reconstruction of the record in Simon’s case. Koon, 358 S.C. at 367, 595 S.E.2d at 460; Whitehead, 352 S.C. at 221, 574 S.E.2d at 2003.

Meanwhile, to the extent Simon self-servingly contends she should be granted a new trial instead of a remand because any such remand would likely be futile, she respectfully is wrong. Significantly, Simon’s trial was conducted just over five months ago, and there are only limited portions of the record that currently need to be reconstructed. Cf. State v. Serrette, 375 S.C. 650, 652, 654 S.E.2d 554, 555 (Ct. App. 2007) (finding reconstruction of the *entire* transcript from Serrette’s trial would be futile “considering the passage of over *ten years’ time* between conviction and sentencing” (emphasis added)). In light of that, there are no legitimate reasons to believe the trial judge, the two assistant solicitors,⁵ and the two defense attorneys involved in Simon’s trial would not be able to effectively reconstruct the currently-missing portions of the record such that meaningful appellate review could be conducted. And, such reconstruction would avoid the *substantial* costs associated with the grant of a new trial while simultaneously ensuring a presumptively-valid jury verdict returned after multiple days of trial is not lightly overturned without a sturdy basis for doing so. See Calderon v. Coleman, 525 U.S. 141, 146 (1998) (instructing “[t]he social costs of retrial or resentencing are significant”); United States v. Mechanik, 475 U.S. 66, 72 (1986) (“The reversal of a conviction entails substantial social costs: it forces jurors, witnesses, courts, the prosecution, and the defendants to expend further time, energy, and other resources to repeat a trial that has already once taken place; victims may be

⁵ Before filing the State’s return, the undersigned counsel for the State reached out to the assistant solicitors involved in the prosecution of Simon’s case to afford them an opportunity to review the trial transcript in its current form and offer any input they may have about the likelihood of successful reconstruction if a remand was granted. In response, Assistant Solicitor Jake Lampke of the Thirteenth Judicial Circuit Solicitor’s Office affirmed he had a strong recollection of the trial proceedings and believed reconstruction would be fruitful if a remand was granted.

asked to relive their disturbing experiences.”); see also Tate v. State, 345 S.C. 577, 581, 549 S.E.2d 601, 603 (2001) (“The regularity of the proceedings of a court of general jurisdiction will be assumed in the absence of evidence to the contrary.”). Therefore, Simon’s request for a new trial should be denied.

WHEREFORE, Respondent prays this Court will deny Simon’s new trial motion and decline to grant a new trial; grant Simon’s alternative request for a limited remand and remand the matter to the circuit court for reconstruction of the currently-missing portions of the trial record; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General



By: _____
Mark R. Farthing
S.C. Bar Number 76901

August 2, 2026

RECEIVED

Aug 03 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2026-000664

THE STATE,

Respondent,

vs.

RENEE LAVONNE SIMON,

Appellant.

PROOF OF SERVICE

I, Mark R. Farthing, certify I have served the within Return to Motion for a New Trial on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Sarah E. Shipe, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.
This 2nd day of August, 2026.



MARK R. FARTHING
Senior Assistant Deputy Attorney General
Office of the Attorney General