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Nov 19 2026
S.C. SUPREME COURT

Exhibit A

FILED
2026 NOV -9 PM 2:10
LISA COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)	
NORMAN STARNES,)	C/A 2011-CP-32-830
)	*CAPITAL PCR*
Applicant)	
vs)	**ORDER REGARDING ~~PROPOSED~~ ORDER PROCESS**
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
)	

The captioned matter is a capital post-conviction relief (PCR) action. On October 8, 2026, the undersigned advised the parties by email of the decision to deny relief and also requested a proposed order from the State. Applicant objected to the proposed order process and a virtual hearing was held on the matter on October 13, 2026. This order follows to memorialize the findings and conclusions following arguments at the hearing. This Court will follow the proposed order process as allowed in *Lindsey v. State*, 447 S.C. 93, 924 S.E.2d 104 (2025). The undersigned has reached this decision based on the following:

1. In *Lindsey*, our Supreme Court directly addressed the question on the continued propriety of utilizing a proposed order process in a capital PCR action. While recognizing state precedent that "'strongly encourag[d] PCR judges to draft their own findings of fact and conclusions of law in death penalty cases,'" our Court also recognized that the same precedent acknowledged the long-standing practice of requesting proposed orders "'for the sake of efficiency.'" 447 S.C. at 124, 924 S.E.2d at 121 (quoting *Hall v. Catoe*, 360 S.C. 353, 365, 601 S.E.2d 335, 341 (2004)). Our Supreme Court also observed that the process is allowable in the commentary to the Code of Judicial Conduct: "The commentary to Canon 3B(7) of the Code of Judicial Conduct states a court 'may request a party to submit proposed findings of fact and

conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.'" *Id.*, at 123 *See also Hall*, 360 S.C. at 364, 601 S.E.2d at 341 (recognizing same). In rejecting Lindsey's argument that the PCR court erred in adopting the State's proposed order, our Supreme Court plainly set out that the proposed order process is not impermissible as long as certain safeguards are followed, specifically, that "(1) the other parties are aware of the request for a proposed order and are allowed to respond to the proposed order; and (2) the PCR court carefully reviews the order before signing it." *Id.*, at 124, 924 S.E.2d at 121.

2. Here, Applicant expressed concerns about the propriety of the proposed order process; the abdication of judicial responsibility in making findings of facts and conclusions of law; potential ethical concerns regarding the same; and voiced argument that the findings and conclusions might narrow the possibility of further relief. Applicant urges this Court to write its own order from scratch. This Court disagrees with Applicant's arguments and declines the request to write its own order.

3. First, a comment on the development of the case. Unlike an average non-capital matter, a capital PCR is granted full discovery and generally is resolved only after extensive evidentiary hearings and post-hearing briefing. That is the case here. An evidentiary hearing was held on July 25-27, 2025. At the conclusion of that hearing, this Court deferred ruling until review of the parties' post-hearing briefing that would following upon receipt of the transcript. Applicant submitted his brief, the State submitted a responsive brief thereafter, with both a reply and sur-reply that followed. This Court thoroughly reviewed and re-reviewed the arguments in light of the record before making the determination announced in the October 13, 2026 email. The Court agrees with the State's position on the issues raised based on the arguments in the briefing.

Therefore, the Court requested a proposed order from the prevailing party, in this case the State. But that is not the end of the process as this Court will carefully consider the proposed findings and conclusions.

4. This Court will follow the allowable procedure pursuant to *Lindsey* and impose the safeguards our Supreme Court set out. Applicant will be afforded time to review the proposed order and suggest challenges to any particular proposed finding or conclusion. Even if Applicant fails to file any suggestions or objections to the proposed order, the undersigned has considered each position and argument presented in Applicant's brief and his reply. The undersigned will thoroughly review the proposed order in light of all the evidence from the hearing and parties' arguments and filings. Lastly, while this Court does not disagree that the possibility of relief in other forums may very well be narrowed by the ruling, that will be the function of the Court's decision, not any impropriety in the order process.

THEREFORE, the undersigned ORDERS that the State prepare a proposed order in this matter that largely follows their post-hearing brief and sur-reply. At the same time the proposed order is submitted to the undersigned, the State shall also serve opposing counsel. Upon receiving and reviewing the proposed order, opposing counsel will contact the Court with a request for time in which to raise specific objections to the proposed findings of fact and conclusions, but they need not merely incorporate prior arguments that were presented in Applicant's post-hearing brief and reply and addressed in the proposed language.

IT IS SO ORDERED.

~~Hon.~~ Donald B. Hocker, Circuit Court Judge
By Special Assignment

November 9, 2026.

Laurens, South Carolina.

Exhibit B

STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

COUNTY OF HORRY

**** TRANSCRIPTION OF STATUS CONFERENCE ****

June 26, 2026

BEFORE: The Honorable Benjamin Culbertson

LOUIS WINKLER,

Plaintiff,

vs.

STATE OF SOUTH CAROLINA,

Defendant.

APPEARANCES:

Melody Brown, Esq.
Brandon Larrabee, Esq.
Appearing for the Preservation Society.

Emily Paavola, Esq.
Appearing for the Defendants.

Also Present: Allison Franz, Esq.

Recorded by: Digital Courtroom

Transcriber: Natalie Dahl, RPR
SC Official Court Reporter

NOTE: *Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF $1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: ndahl@sccourts.org*

INDEX

Description	Page
(NONE)	

EXHIBITS

(NONE)

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality
(sic)	Word(s) said but may be incorrect

P R O C E E D I N G S

THE COURT: Will this suffice for the purposes of our status?

MS. BROWN: Yes, sir.

THE COURT: Which one do we want to take first, Winkler or -- we have Winkler and Woods, which one do we want to do first?

MS. BROWN: I might suggest Mr. Winkler's case, because it was just kind of a quick question, Your Honor. If you want any copies of the briefs or, you know, the memos that we've done before, or anything that would help you --

THE COURT: Yeah, and I'm going to be honest with you, I did this -- just me being dilatory on it, I wanted to dot my I's and cross my T's. I'll let you know up front, I've made a decision to deny the motion to alter or amend.

In fact, during the delay, I think the supreme court came up with another case that more or less verifies -- at least the part that requires the judge to be the one who prepares the order -- and so that has -- that has come out. I did see that case. It came out like two months after our hearings or something of that nature.

So tell me how do you all want to handle it,

whether you want to submit briefs or proposed orders, or how do you want to address it?

I guess, Ms. Paavola, since I'm ruling against you, which would you prefer?

MS. PAAVOLA: Well, the parties have briefed the motion to alter or amend the judgment, and it would be our preference that you write an order addressing your decision on that.

THE COURT: Okay. All right. Well, then, let me do this, if I can get -- Ms. Brown, if you would then submit a proposed order and run it by them, and let them take a look at it before you submit it to me.

MS. BROWN: Yes, sir.

THE COURT: Number one, as I said, they came out with -- and I had it here. Let me find it. Lindsay versus State, the decision came out in November of 2025. That dealt with, you know, whether or not the judge had to be the one that prepared the order. And it basically says as long as the judge does review the order and doesn't just rubber stamp it, then that will suffice, number one.

And then, number two, I understand your argument, Ms. Paavola, on the ineffective

assistance of counsel, but without some showing, I've yet to find anything that -- in my view -- would change the outcome. I mean, we've gone through this where they didn't order the studies, the background studies, the mitigation studies, and things of that nature. But, still, nothing has been presented that would have changed the outcome, and that is basically my decision, is that the ineffective assistance of counsel must show that the standard of counsel fell below what is required, and that there would have been a different outcome or a good chance of a different outcome had they not fallen below that standard.

All right?

MS. BROWN: Yes, sir.

THE COURT: Now, what do we got -- I mean, anything else on Winkler?

MS. BROWN: Nothing from the State, Your Honor.

THE COURT: Okay. All right. And, again, I apologize on that. I started doing the research, and I started making notes, and I started jotting, and then I was going to write the order, and then they came out with the supreme court decision that basically said I didn't have to write the order,

and it just kind of got put on the back burner for a while, so I apologize for that.

All right. Anthony Woods. Are we ready to go on that one, or what do we need to do?

Exhibit C

RECEIVED
Jun 11 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DALLAN TIMOTHY THORSTENSON,

APPELLANT.

APPELLATE CASE NO. 2024-000049

MOTION TO REMAND FOR RECONSTRUCTION OF PORTIONS OF APPELLANT'S TRIAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel moves this Court for an order remanding this case to the trial judge in the Aiken County Court of General Sessions to reconstruct portions of appellant's trial from November 27-30, 2023 that are missing from the trial transcript. Counsel would show this Court:

1. Appellant was indicted at the May 2023 term of the Aiken County grand jury for the offenses of murder and possession of a weapon during the commission of a violent crime.

2. Appellant's case was called to trial on November 27, 2023, before the Honorable Michael G. Nettles and a jury. Dayne C. Phillips represented appellant. Jacqueline Charbonneau was the

assistant solicitor prosecuting for the state. Upon information and belief, the defense of habitation was a material issue at trial, and a jury note pertaining to the defense of habitation was sent to the trial judge during deliberations. A recharge on the law of habitation then occurred which apparently instructed on the purported legal means to expel a trespasser who had originally been an invitee in the home of the ejector. Upon additional information and belief, after that recharge on the law, the jury found appellant guilty as indicted and Judge Nettles sentenced him to forty-three years' incarceration for murder and five years concurrent on possession of a weapon during the commission of a violent crime. The jury note about the defense of habitation, the colloquy about it, the recharge on the law of habitation, the jury verdict and sentencing are not included in the trial transcript. This case is now on appeal before this Court.

3. The trial was recorded by the Digital Court Reporter Project (DCRP). The court reporter transcribing the original transcript was Penny M. Johnson.

4. Undersigned counsel has consulted with Trial Counsel Dayne Phillips about the missing portions of transcript. The affidavit of Counsel's Phillips regarding the jury note and the recharge on the law of habitation that occurred during jury deliberations -- but were not transcribed -- is attached to this motion to remand. See June 4, 2025 Affidavit of Dayne Phillips attached as Exhibit A to this motion.

5. This Court held this appeal in abeyance in its order dated October 1, 2024 so that missing pre-trial hearing transcripts from November 8, 2023 and November 20, 2023 and the conclusion of appellant's trial could be obtained by this office. The pre-trial hearings from November 8, 2023 and November 20, 2023 were received by this office on or about April 22, 2025 and November 12, 2024, respectively. However, despite the continuing best efforts of this office the recording of the conclusion of appellant's trial as described above cannot be located by Court Administration

for transcription. See Email from Court Reporter Manager Tammie Holmes to Administrative Coordinator Della White stating no recording is available for the afternoon of this November 30, 2023 trial when these events missing from the trial transcript occurred is attached to this motion as Exhibit B.

WHEREFORE, undersigned counsel requests an order from this Court remanding this case to the trial court for the reconstruction of the missing portions of appellant's April 27-30, 2023 trial as outlined above.

Respectfully submitted,

Robert M. Dudek,
Chief Appellate Defender
Attorney for Appellant

This 11th day of June, 2025.

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE SOUTH CAROLINA COURT OF APPEALS
COUNTY OF AIKEN	)	
THE STATE,	)	
RESPONDENT,	)	
v.	)	AFFIDAVIT
DALLAN TIMOTHY THORSTENSON,	)	
APPELLANT.	)	

PERSONALLY appeared before me, Dayne C. Phillips, Esquire, who being duly sworn, deposes and says:

1. I represented the Appellant in the above-captioned case at trial from November 27-30, 2023, on the charges of murder and possession of weapon during the commission of a violent crime before the Honorable Michael G. Nettles and a jury.

2. I have reviewed pages 557–583 of the trial transcript at the request of Chief Appellate Defender Robert Dudek, and we discussed what appears missing at the end of the trial transcript.

3. After the conclusion of the transcribed portions of the trial, I recall the jury having a question (note) regarding the defense of habitation, and the Trial Court recharged the jury on the defense of habitation. Although I do not remember the exact language used by Judge Nettles, I recall the Court instructing the jury that the chosen means of ejectment of a trespasser must be reasonable under the circumstances (i.e., reasonable force to expel the trespasser).

4. The jury issued verdicts of guilty as charged, and Judge Nettles sentenced Appellant to forty-three (43) years' incarceration for murder and five (5) years concurrent on possession of a weapon during the commission of a violent crime.

5. It appears the jury question, the recharge on the law, the verdict, and sentencing were not transcribed by the court reporter.

6. Undersigned counsel is available if further information is needed by this Court.

Dayne C. Phillips, Esquire

SWORN TO before me this 4th day of June, 2025.

(L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027

From: Holmes, Tammie <tholmes@sccourts.org>
Sent: Thursday, April 24, 2025 1:49 PM
To: White, Della <dwhite@sccid.sc.gov>
Cc: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>; Legal Eagle Transcripts (transcripts@legaleagleinc.com) <transcripts@legaleagleinc.com>; Transcripts <transcripts@sccourts.org>
Subject: RE: [External] RE: The State v. Dallen Thorstenson

Good afternoon Della.

I have heard back from our vendor regarding the audio of the verdict and sentencing of the above referenced matter. There was no recording with this information from the afternoon of November 30, 2023.

Thank you,

Tammie M. Holmes
Court Reporter Manager
South Carolina Judicial Branch
1220 Senate Street, Ste. 200
Columbia, SC 29201
tholmes@sccourts.org
803-734-1825

The message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is privileged, confidential or otherwise exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message. If you have received this message in error, please contact me immediately and delete all copies of this message.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
Jun 11 2025
SC Court of Appeals

Appeal from Aiken County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

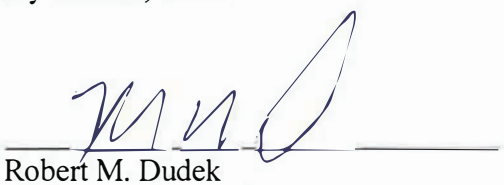
V.

DALLAN TIMOTHY THORSTENSON,

APPELLANT.

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Motion to Remand for Reconstruction of Appellant's Trial in the above-referenced case have been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 11th day of June, 2025.



Robert M. Dudek
Chief Appellate Defender

Attorney for Appellant

Exhibit D

The South Carolina Court of Appeals

The State, Respondent,

v.

Dallan Timothy Thorstenson, Appellant.

Appellate Case No. 2024-000049

ORDER

On June 11, 2025, Appellant moved this court to hold his appeal in abeyance and remand to the circuit court for reconstruction of missing portions of his April 27-30, 2023 trial. Specifically, Appellant moved to reconstruct the portions of the transcript concerning "[t]he jury note about the defense of habitation, the colloquy about [the note], the recharge on the law of habitation, the jury verdict, and sentencing." On June 23, 2025, Respondent filed a return, consenting to holding the appeal in abeyance and remanding to the circuit court for reconstruction. After careful consideration of the filings, we grant Appellant's motion. We hold this appeal in abeyance and remand to the circuit court for reconstruction of the missing portions of Appellant's trial, including the jury note about the defense of habitation, the colloquy about the note, the recharge on the law of habitation, the jury verdict, and sentencing. Appellant's counsel shall contact opposing counsel and the Honorable Michael G. Nettles within ten days of the date of this order to schedule such hearings as Judge Nettles deems appropriate. If Judge Nettles determines reconstruction is not possible, he shall immediately notify this court and all parties. If the record is reconstructed, Appellant's counsel shall immediately notify this court so that the appropriate appellate timelines can be set. Appellant's counsel shall provide an update to the clerk of this court no later than thirty days from the date of this order, and every thirty days thereafter until Judge Nettles resolves this matter, or the appeal will be dismissed.

_____ J.
FOR THE COURT

Columbia, South Carolina

FILED
Jul 30 2025

cc:
Alan McCrory Wilson, Esquire
Kaylee Christene Kemp, Esquire
Joanna Katherine Delany, Esquire
Honorable Michael G. Nettles
Robert J. Harte

Exhibit E

RECEIVED
Apr 09 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM DAVID GUNN,

APPELLANT.

APPELLATE CASE NO. 2024-001358

MOTION FOR ABEYANCE AND REMAND OF APPELLANT'S TRIAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order holding this appeal in abeyance and remanding this matter to the trial court with an order requiring the parties to reconstruct portions of appellant's trial from April 15-16, 2024 and July 22, 2024.

Appellant was indicted at the July 17, 2023 term of the Oconee County grand jury for the offenses of burglary-first degree, malicious injury to real property, possession of tools used in the commission of a crime, and resisting arrest. Appellant's case was called to trial on April 15, 2024, before the Honorable R. Scott Sprouse and a jury. Catherine A. Wyse of the Law Office of Jessica

R. DeShon represented appellant. Bethany A. Blundy was the assistant solicitor prosecuting for the state. The jury found appellant guilty of burglary-second degree, malicious injury to real property, possession of tools used in the commission of a crime, and resisting arrest. Judge Sprouse sentenced appellant to fifteen years' incarceration on the burglary, one year concurrent on the charge of resisting arrest, 30 days' time served concurrent on the charge of malicious injury to real property, and two years' consecutive on the charge of possession of tools used in the commission of a crime. Judge Sprouse convened a hearing on July 22, 2024, to hear a motion for reconsideration of the sentence. The transcript of this hearing was combined with the April trial transcript by the court reporter. This case is now on appeal before this Court.

Appellant has been unable to obtain a true and complete transcript of this trial, as will be discussed below.

This case was not assigned to a live court reporter but was recorded by the Digital Court Reporter Project (DCRP). The first transcript delivered on or about January 2, 2025, by subcontractor Legal Eagle and transcribed by Jeanne Meldrim, noted on April 15, 2024, the audio file from 1:30 p.m. to 3:00 p.m. is "missing" and the transcript lacks opening statements, the entirety of a *Jackson v. Denno* hearing, and unknown witness(s). Additionally, the 235-page transcript contained more than 226 instances of "unintelligible," 37 instances of "simultaneous speaking," 21 instances of "background noise," and 6 instances of "inaudible" testimony that could not be transcribed. Moreover, while the above occurs throughout witness testimony, counsel submits there are more than 15 instances where the above occurs during critical portions of trial such as objections, closing arguments, and jury instructions.

On February 28, 2025, undersigned counsel requested Legal Eagle review the audio and see if additional testimony could be recovered and filed a motion to hold the case in abeyance

pending receipt of a complete trial transcript. On March 12, 2025, a revised transcript was received by this office. After careful review by undersigned counsel the transcript is still lacking the audio file from April 15, 2024, 1:30 p.m. to 3:00 p.m. Thus, the transcript continues to lack opening statements, the entirety of a *Jackson v. Denno* hearing, and unknown witness(s). Additionally, 94 instances of "unintelligible," 37 instances of "simultaneous speaking," 21 instances of "background noise," and 6 instances of "inaudible" testimony that could not be transcribed. Moreover, while the above occurs throughout witness testimony, counsel submits there are more than 10 instances where the above occurs during critical portions of trial such as objections, closing arguments, and jury instructions. A complete list of the updated transcript deficiencies are attached to this motion as Exhibit A.

Undersigned counsel reached out to trial counsel to confirm the missing audio portion did indeed include opening statements, the entirety of a *Jackson v. Denno* hearing, and unknown witness(s). Trial counsel was unsure of the number or identities of the missing witnesses.

The trial court has the authority to set the record for appeal. *State v. Ladson*, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). "[T]he inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal." Id. (internal citations omitted). "Where a trial transcript has been lost or destroyed, a court may remand to have the record reconstructed." *Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); *see also Whitehead v. State*, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (holding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed).

In order for the record to be reconstructed, it must be done in a manner that provides for meaningful appellate review and complies with the constitutional guarantees of procedural due

process. *Ladson*, 373 S.C. at 325, 644 S.E.2d at 273-274; *see also Adams v. H.R. Allen, Inc.*, 397 S.C. 652, 726 S.E.2d 9 (Ct. App. 2012). Moreover, a "new trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review." *Ladson*, 373 S.C. at 325, 644 S.E.2d at 274 (internal quotations omitted).

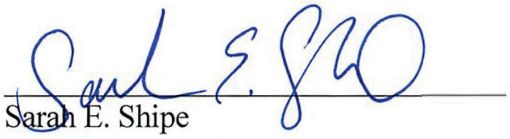
In *Ladson*, after the reconstruction hearing, the Court was "left with a bare bones summary of the evidence (with more remaining unknown than known) from a lengthy multi-day and fact-intensive trial that resulted in a non-parolable, twenty-five-year person term." *Id.* at 327, 644 S.E.2d at 274. The record before the *Ladson* Court contained only "a few gratuitous references to generic motions and objections" without any information concerning "the context of the motions, the specific nature of the motions, and whether the challenged evidence was cumulative to other unchallenged evidence." *Id.* In concluding the record was insufficient for meaningful appellate review, this Court also noted the record "would effectively foreclose any collateral challenge through post-conviction relief or otherwise." *Id.* at 327, 644 S.E.2d at 275. Thus, this Court concluded, Ladson had demonstrated "clear prejudice." *Id.*

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*, the Court of Appeals 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."

The absence of critical portions of the trial transcript and the lack of clarity throughout in the present matter, including witnesses and pre-trial motions and ruling, prevents meaningful appellate review and reconstruction of the testimony of the omitted witnesses and acknowledgement of the factual and legal basis for issues surrounding the same.

WHEREFORE, undersigned counsel requests an order to continue holding the present appeal in abeyance and remanding this matter to trial court for the reconstruction of the missing portions of the April, 2024 trial. While this motion is pending, counsel asks this Court to continue hold the timelines for filing the initial brief of appellant and designation of matter.

Respectfully submitted,



Sarah E. Shipe
Appellate Defender

Attorney for Appellant

This 9th day of April, 2025.

EXHIBIT A

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM DAVID GUNN,

APPELLANT

APPELLATE CASE NO. 2024-001358

REVISED TRIAL TRANSCRIPT ERRATA

In accordance with Rules 207 and 607, SCACR, counsel for William David Gunn submits the following trial transcript errata with the challenge of the accuracy of the transcript of record dated April 15-16 & July 22, 2024 transcribed by Jeanne Meldrim of Legal Eagle:

p. 1: Cover page deficient per CR Manual, lacks appearances.

p. 2: Erroneous appearances page.

p. 3, l. 2: "Audio missing—Opening Statements, Wtiness(s), Jackson-Denno Hearing""

p. 6, ll. 4-5: "I am a contract manager for (unintelligible)."

p. 6, ll. 11-13: "Retired from (unintelligible) and he's retired (unintelligible)."

p. 6, ll. 14-16: "My occupation is (unintelligible) married and my wife is (unintelligible) she is a teacher's aide at Jason Brown (unintelligible)."

p. 6, l. 18: "JUROR: (unintelligible)"

p. 6, ll. 20-21: "(unintelligible) maintenance for Ace Hardwares. Married (unintelligible) Upstate Medical Associates."

p. 7, ll. 2-3: "My husband is (unintelligible) works at (unintelligible)"

p. 7, l. 5: "Real estate (unintelligible)."

p. 7, l. 7: "I'm a registered nurse (unintelligible)"

p. 7, l. 13: " (unintelligible) Blue Cross Blue Shield"

p. 7, l. 16: "I am retired (unintelligible) and my husband is a pastor."

p. 7, ll. 20-21: "general foreman for (unintelligible)"

p. 8, l. 1: "JUROR: (unintelligible)"

p. 8, l. 6: "Work at (unintelligible) Seneca. (unintelligible)."

p. 8, l. 9: "JUROR: Nuclear (unintelligible) security."

p. 8, l. 12: "JUROR: (unintelligible) agility foreman"

p. 8, ll. 15-16: "I work for a company called Webber (unintelligible)."

p. 8, ll. 18-19: "I work for Prisma Oconee, single and (unintelligible)."

p. 8, l. 21: "JUROR: (unintelligible)."

p. 8, l. 23: "JUROR: (unintelligible)."

pp. 8, l. 25 – 9, l. 1: "I work for (unintelligible) as a locator (unintelligible) married."

p. 9, ll. 6-7: "I'm retired disabled former (unintelligible) technician."

p. 9, l, 11: "husband is (unintelligible)"

p. 9, l. 13: "I work at (unintelligible)"

p. 9, ll. 16-17: "(unintelligible) service manager with Johnson & Johnson (unintelligible)"

p. 10, ll. 7-8: "Retired (unintelligible) technician (unintelligible) husband works for (unintelligible)."

p. 10, ll. 13-14: "Billing specialist for (unintelligible) and my husband is a military (unintelligible)"

p. 10, l. 16: "I'm an (unintelligible)"

p. 11, ll. 6-7: "(unintelligible) my wife's a nurse (unintelligible)"

p. 11, l. 19: "JUROR: (unintelligible)."

p. 11, l. 21: "(unintelligible) corporation."

p. 12, l. 2: "Self-employed for (unintelligible)"

p. 12, ll. 3-4: "transcriptionist for the (unintelligible)"

p. 12, l. 6: "maintenance technician for (unintelligible)"

p. 12, l. 11: "Works at Clemson University teaching (unintelligible)"

p. 12, l. 14: "JUROR: (unintelligible)."

p. 12, ll. 16-17: I'm retired (unintelligible) self-employed (unintelligible)."

p. 12, l. 19: "I'm self-employed (unintelligible)"

p. 12, ll. 22-23: "and my wife (unintelligible)."

p. 12, l. 25: "Retired for over six years (unintelligible)"

p. 20: Case called, no time stamp.

p. 40, ll. 13-16: "Let's take a short break and then we'll---we can--- (simultaneous speaking) MS. BLUNDY: Thank you"

p. 44, ll. 14-16: "THE COURT: ---of the question. (simultaneous speaking) MS. BLUNDY: ---relevant on the burglary itself."

p. 49, ll. 19-21: "speaking with the officers specifically about the crime--- (simultaneous speaking) THE COURT: Do we need to a Jackson v. Denno hearing?"

p. 50, ll. 4-6: "testify since he was the one who Mirandized---(simultaneous speaking) THE COURT: Are you going to present other officers"

p. 54, l. 5: (AUDIO MISSING FROM APPROXIMATELY 1:30 TO 3:00) no timestamp when audio resumes.

p. 58, l. 12: "Toby (unintelligible) Shaw"

p. 59, ll. 12-15: "when your mother passed --- (simultaneous speaking) A. Yes"

p. 61, ll. 15-17: "oh, yes --- (simultaneous speaking) – prior—"

p. 61, ll. 23-25: "Oh, yes. (simultaneous speaking) Yes, ma'am."

p. 66, ll. 2-4: "This is --- (simultaneous speaking) By---by numbers."

p. 67, ll. 4-6: "front entrance in the other --- (simultaneous speaking)

pp. 67, l. 25 – 68, l. 2: "in that bed, in that --- (simultaneous speaking) Yes ma'am."

p. 69, ll. 10-12: "and that's a ramp at the back--- (simultaneous speaking) Yes , it is."

p. 69, ll. 22-24: "Was it like that the last time – (simultaneous speaking) A. No it was not."

p. 70, ll. 8-10: "And that was not like that when you had left--- (simultaneous speaking) Objection"

p. 72, ll. 13-15: "that you just--- (simultaneous speaking) Yes, ma'am it is."

pp. 80, l. 24 – 81, l. 1: "to the State prior to --- (simultaneous speaking) MS. BLUNDY: Judge---"

p. 82, l. 1: "A. (unintelligible)"

p. 82, l. 11: "and you said for how long did she (unintelligible)"

p. 82, ll. 15-17: "anybody to stay with her --- (simultaneous speaking) A. Yes."

p. 84, ll. 6-8: "Hold on. (simultaneous speaking) Overruled"

p. 86, l. 11: "and you noticed that there (background noise) later on?"

p. 87, ll. 19-21: "embezzling from churches that --- (simultaneous speaking) A. Oh, no ma'am"

p. 91, l. 7: "I believe deputy (unintelligible) went around to"

p. 91, ll. 16-17: "stepping out off the back porch that time (unintelligible)"

p. 93, ll. 4-6: "altered or changed in any way--- (simultaneous speaking) A. It has not"

p. 95, ll. 6-7: "as far as the collection (unintelligible) when the call come in"

p. 95, ll. 14-19: "but they didn't tell you that it was (unintelligible) that was on--- (unintelligible) scene---(simultaneous speaking) A. to my knowledge…it was somebody that was (unintelligible) for the property."

p. 96, l. 5: "I did go through the house (background noise)"

p. 98, ll. 19-21: "of the house---(simultaneous speaking) --- handcuffs"

p. 104, ll. 22-24: "No ma'am---(simultaneous speaking)---I was just briefed"

pp. 114, l. 25- 115, l. 2: "if it was on your body cam---(simultaneous speaking) A. May have"

p. 115, ll. 10-11: "Do you remember if there was any plastic on any of the (background noise)?

p. 115, l. 19: "Q. Now, (background noise)"

p. 119, ll. 12-14: "but he wasn't dropped---(simultaneous speaking) -- off back at home"

p. 120, ll. 15-16: "did you by chance find any weapons, guns, or knives (background noise)?"

p. 121, l. 18: "prior to stipulated redact (unintelligible)"

pp. 122, l. 25 – 123, l. 7: "MS. WYSE: I mean, that was definitely the agreed upon times---(simultaneous speaking) THE COURT: ---times. MS. WYSE: Yes,…I just wanted that---(simultaneous speaking) THE COURT: ---previous objection (unintelligible)"

pp. 125, l. 25 – 126, l. 3: "the reason (background noise) the reason is because you did (unintelligible)…and that is why you wrote the warrant (unintelligible)?"

p. 126, ll. 13-15: "might need to (background noise) so that I can refresh his recollection (unintelligible) body cam outside"

p. 127, ll. 19-22: "MS. WYSE: ---the State (unintelligible). THE COURT: We don't…(simultaneous speaking) MS. WYSE: No, sir"

p. 128, ll. 3-6: "because I---(simultaneous speaking) MS. BLUNDY: Yeah, just hit the exit"

p. 128, ll. 12-13: "do we have another short witness (background noise)?

p. 129, ll. 12-15: "Your Honor (simultaneous speaking) THE COURT: Is that Exhibit Number 2?"

p. 130, ll. 1-3: "and then looking down a little bit further---(simultaneous speaking) A. Okay."

p. 130, l. 6: "we finish up (unintelligible)."

p. 133, ll. 21-22: "cut open the evidence bag for (background noise)"

p. 145, ll. 3-5: "I couldn't give you the…exact mileage---(simultaneous speaking)—right off the top of my head"

p. 152, ll. 20-22: "uh-huh. (simultaneous speaking) Q. (unintelligible) You mentioned in the beginning"

p. 153, ll. 19-22: "Q: But you…never got an answer as to who owned---(simultaneous speaking) A. I Was told that Mr. Shaw was in control"

p. 154, ll. 7-9: "I can't testify to what he done---(simultaneous speaking) Q. Did you look into it?"

p. 154, l. 24: "Q. Okay. But you were the (unintelligible)?"

p. 156, ll. 14-15: "possession of burglary tools, the (background noise) property and burglary first"

p. 171, l. 13: "THE COURT: (inaudible) Ms. Wyse, is there anything"

p. 171, l. 6: "THE COURT: Okay. (unintelligible). Okay"

p. 174, ll. 13-14: "They were still paying the (background noise) on it"

p. 179, ll. 4-6: "I would like to have seen all of the video, not just the portions of the video (background noise). And (unintelligible)."

p. 180, ll. 10-11: "statements the defendant made to the officers (background noise)."

p. 180, ll. 16-17: "He didn't know the police were going to (unintelligible)."

p. 181, ll. 9: "lot of them (unintelligible) questioning them"

p. 181, ll. 22-24: "He was in that house (background noise) the difference between burglary second and that ladies and gentlemen (background noise) burglary first."

p. 182, ll. 16-17: "What do you (background noise) about this?"

p. 183, ll. 15-16: I asked him about his incident report (background noise)"

p. 183, ll. 24-25 "I asked every single deputy who took the stand, deputy (unintelligible) was there food in the refrigerator"

p. 184, ll. 9-10: "not something that we heard for the first time (unintelligible)"

p. 185, l. 4: "How do you do that? You (unintelligible)."

p. 186, ll. 8-9: "I get to (background noise) (Unintelligible) Because that is a basic right"

p. 187, ll. 17-18: "That he knew that there was no intent (unintelligible)"

p. 189, ll. 18-19: "you can have a dress shop (background noise)"

p. 190, ll. 12-15: "That doesn't mean he was resisting (unintelligible) the video...I'm not (unintelligible)"

p. 206, l. 8: "nitroglycerine, (inaudible) steel wedge, drill, tap in."

p. 208, l. 10: (jury exits courtroom) *jury exits **to deliberate**, no timestamp

p. 209, l. 8: (jury enters courtroom) *jury enters courtroom following sending questions, no timestamp

p. 214, ll. 2-3: "indirect obstruction, is (unintelligible) arrest or the service or execution"

p. 214, l. 11: "you may resume your deliberations" Lacks entry noting jury movement, lacks timestamp.

p. 214, ll. 22-23: "THE COURT: Counsel, I've been informed the jury has a verdict." Lacks timestamp.

p. 215, l. 5: "(jury enters courtroom)" Lacks timestamp.

p. 215, ll. 10-13: "Mr. Foreman, I need you to sign the verdict form. (simultaneous speaking) THE FOREMAN: ---thinking, I'm sorry."

p. 217, l. 1: "thank you, sir. (background noise)"

pp. 217, ll. 25 – 218, ll. 2: "You Honor, I was hoping that you could make--- (simultaneous speaking) THE COURT: Well, it---it---it was---"

p. 218, ll. 15-21: "Mr. Gala had told me…(simultaneous speaking)…When did Mr. (unintelligible) talk to the juror?"

p. 218, l. 23: "UNIDENTIFIED SPEAKER: (unintelligible)"

p. 227, l. 4: "and again, (unintelligible) against me."

p. 229, ll. 9-11: "(PROCEEDINGS FOR APRIL 16, 2024 CONCLUDED)…(PROCEEDINGS FOR JULY 22, 2024 BEGIN)" no listing of appearances for July 22 proceedings, no notation of time or location of proceedings- prosecutor not present at trial present at this hearing speaking on the record (Mr. Alderman)

P. 229, ll. 14-15: "THE FIRST MATTER IS James Barly. I need to copy (unintelligible)"

p. 230, ll. 10-11: "we are her today on ---Mr. (unintelligible) has already told you"

p. 230, ll. 14-15: "Mr. Gunn was tried back in April (background noise) in Oconee County Courthouse (unintelligible)"

p. 231, ll. 5-6: "Deputy Public Defender John (unintelligible) saw some of the jurors"

p. 232, ll. 1-3: "I found (unintelligible) v. State…in that case (unintelligible) the defendant was charged"

p. 232, ll. 7-10: "Mr. Gunn's case and in the (unintelligible) case, I did raise the argument at sentencing…In (unintelligible) that did not occur"

p. 233, ll. 16-17: "They are not. (unintelligible) did check in with the victim advocate"

p. 233, l. 20 "THE COURT: Okay. Mr. Alderman" unknown prosecutor not previously listed within the transcript begins argument

p. 235: Signed certificate of transcriber dated December 18, 2024- this is a revised transcript requested on February 28, 2025 and delivered to Appellate Defense by Legal Eagle on March 12, 2025. Certificate should reflect a new date.

Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 9th day of April, 2025.

RECEIVED
Apr 09 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM DAVID GUNN,

APPELLANT.

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Motion to Reconstruct the Record of Appellant's Trial in the above-referenced case have been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 9th day of April, 2025.



Sarah E. Shipe
Appellate Defender

Attorney for Appellant

From:	Warren, Kaylynn
To:	Mark Farthing
Cc:	Shipe, Sarah; Caroline Collins
Subject:	2024-001358 The State v. William David Gunn
Date:	Wednesday, April 9, 2025 3:46:00 PM
Attachments:	2024-001358 The State v. William David Gunn Motion for Abeyance and Remand of Appellant"s Trial.pdf

Good Afternoon,

Attached for service in the above-referenced case is the Motion for Abeyance and Remand of Appellant's Trial which will be filed today, April 9, 2025, with the Court of Appeals via email filing.

Respectfully,
Kaylynn

Kaylynn Warren
Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
(803) 734-1330

Exhibit F

The South Carolina Court of Appeals

The State, Respondent,

v.

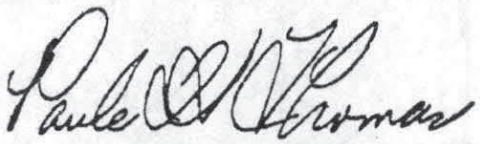
William David Gunn, Appellant.

Appellate Case No. 2024-001358

ORDER

On April 9, 2025, Appellant filed a motion to remand for record reconstruction. Appellant "requests an order holding this appeal in abeyance and remanding this matter to the trial court with an order requiring the parties to reconstruct portions of appellant's trial from April 15-16, 2024, and July 22, 2024." Respondent did not file a return. After careful consideration of the filings, we grant Appellant's motion. We hold this appeal in abeyance and remand to the circuit court for reconstruction of the missing pretrial motions, rulings, opening and closing statements, witness testimony, and jury instructions from Appellant's trial.

Appellant's counsel shall contact opposing counsel and Judge R. Scott Sprouse within 10 days of the date of this order to schedule such hearings as Judge Sprouse deems appropriate. If Judge Sprouse determines reconstruction is not possible, he shall immediately notify this court and all parties. If the record is reconstructed, Appellant's counsel shall immediately notify this court so that the appropriate appellate timelines can be set. Appellant's counsel shall provide an update to the clerk of this court no later than 30 days from the date of this order, and every 30 days thereafter until Judge Sprouse resolves this matter, or the appeal will be dismissed.



FOR THE COURT

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Mark Reynolds Farthing, Esquire
Sarah Elizabeth Shipe, Esquire
The Honorable R. Scott Sprouse

FILED
May 30 2025