

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

J.C. Nicholson, Circuit Court Judge

RECEIVED

MAR 18 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TRAVORIS HURST,

APPELLANT

MOTION FOR A
RECONSTRUCTION HEARING OR
FOR THE GRANTING OF A NEW TRIAL IF THE
RECORD CANNOT BE RECONSTRUCTED

Appellate Case No.: 2009-139166

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order requiring the parties to reconstruct the record of the remaining portions of Appellant's trial transcript held on August 24-28, 2009 before the Honorable J.C. Nicholson in Charleston County. Deborah Everett was the court reporter. Appellant was convicted of murder and sentenced to forty-five years imprisonment.

While working on this case for filing the brief in this Court it was discovered that:

1. The jury instruction given by the trial judge is not in the transcript. (Exhibit A);
2. The closing arguments of both the solicitor and defense counsel are not in the transcript. (Exhibit B);

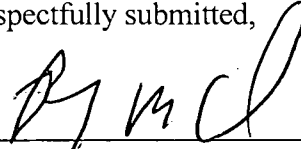
3. The majority of *voir dire* was not transcribed, and parts are listed as “inaudible.” (Exhibit C).
4. All of jury selection is missing from the transcript. (Exhibit D).
5. Questioning of a potential juror subject to possible “for-cause” challenge, or an objection to him being excused is largely “inaudible.” The court’s ruling is also “inaudible.” (Exhibit E).

The applicable missing portions of the transcript are attached as Exhibit A. 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). In the present case important portions of the transcript have been lost or destroyed because of technical or other difficulties. Appellant is in effect serving a life sentence (45 years) and a complete transcript of his trial is necessary for appellate counsel to effectively represent him, and for this Court to give meaningful appellate review of his conviction. Appellant respectfully requests that the order of this Court also mandate that if the trial judge, or appointed judge, is unable to reconstruct the record of this five day trial that he or she must order a new trial for appellant. State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007).

WHEREFORE, the undersigned counsel requests an order for the reconstruction of the remaining portions of Appellant’s trial transcript in this case. Further, Appellant respectfully requests that the order also mandate that if the trial judge, or appointed judge,

is unable to reconstruct the record of this five day trial that he or she must order a new trial for appellant. While this motion is pending, Appellant asks this Court to hold the timelines for filing his initial brief and designation of matter be held in abeyance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

March 18, 2014

Exhibit

A

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions about your
3 right to testify or your right to remain silent under the
4 rights in the fifth amendment of the constitution?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you have any questions at all that
7 you would like to ask the Court or discuss with your
8 attorney?

9 THE DEFENDANT: No, sir.

10 THE COURT: Pardon?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. Do you wish to testify?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. Let me see the attorneys
15 up here just a second, please.

16 (Off-the-record discussion)

17 (Recess taken at 11:42 a.m.)

18 (**TRANSCRIBER'S NOTE: Thereafter, the
19 attorneys presented their closing statements and the Court
20 gave the jury charge. No audio recording {blank CD} was
21 available to be transcribed.)

22 * * * *

23 (At 4:42 P.M., the trial resumed as follows:)

24 THE COURT: Anything from the State before we
25 bring the jury in?

Exhibit

B

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions about your
3 right to testify or your right to remain silent under the
4 rights in the fifth amendment of the constitution?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you have any questions at all that
7 you would like to ask the Court or discuss with your
8 attorney?

9 THE DEFENDANT: No, sir.

10 THE COURT: Pardon?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. Do you wish to testify?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. Let me see the attorneys
15 up here just a second, please.

16 (Off-the-record discussion)

17 (Recess taken at 11:42 a.m.)

18 (***)TRANSCRIBER'S NOTE: Thereafter, the
19 attorneys presented their closing statements and the Court
20 gave the jury charge. No audio recording {blank CD} was
21 available to be transcribed.)

22 * * * *

23 (At 4:42 P.M., the trial resumed as follows:)

24 THE COURT: Anything from the State before we
25 bring the jury in?

Exhibit

C

1 because (inaudible) how I thought I would react to this
2 situation. It's not how I reacted, I always thought I
3 would've (inaudible) given anything just to keep him away
4 from me (inaudible), Judge, I would like to think I could
5 be fair and impartial but (inaudible) --

6 THE COURT: Your experience was a traumatic one,
7 I'm sure it was very traumatic. I'm sorry it happened but
8 how do you think it would affect you (inaudible).

9 THE JUROR: (Inaudible), give me an hour to think
10 about it.

11 THE COURT: Unfortunately, I don't have an hour.

12 THE JUROR: (Inaudible) listen open and honest
13 heart (inaudible) experience. I learned from it. It's
14 not the same experience that everyone else has had.

15 THE COURT: Do you think you can be fair to both
16 the State and the Defendant?

17 THE JUROR: Since I'm not completely positive in
18 the interest of both parties, I'm going to have to say no
19 I can't swear that I would be totally impartial.

20 THE COURT: All right. Thank you so very much.
21 You can go (missing voiced backup... (inaudible). Any
22 motions?

23 (***) TRANSCRIBER'S NOTE: After many hours trying
24 to decipher this audio CD, it is not possible to make an
25 accurate record of the remaining jury selection).

Exhibit

D

1 because (inaudible) how I thought I would react to this
2 situation. It's not how I reacted, I always thought I
3 would've (inaudible) given anything just to keep him away
4 from me (inaudible), Judge, I would like to think I could
5 be fair and impartial but (inaudible) --

6 THE COURT: Your experience was a traumatic one,
7 I'm sure it was very traumatic. I'm sorry it happened but
8 how do you think it would affect you (inaudible).

9 THE JUROR: (Inaudible), give me an hour to think
10 about it.

11 THE COURT: Unfortunately, I don't have an hour.

12 THE JUROR: (Inaudible) listen open and honest
13 heart (inaudible) experience. I learned from it. It's
14 not the same experience that everyone else has had.

15 THE COURT: Do you think you can be fair to both
16 the State and the Defendant?

17 THE JUROR: Since I'm not completely positive in
18 the interest of both parties, I'm going to have to say no
19 I can't swear that I would be totally impartial.

20 THE COURT: All right. Thank you so very much.
21 You can go (missing voiced backup... (inaudible). Any
22 motions?

23 (***) TRANSCRIBER'S NOTE: After many hours trying
24 to decipher this audio CD, it is not possible to make an
25 accurate record of the remaining jury selection).

Exhibit

E

1 THE COURT: The problem I have is if you can't
2 say. Only you know. Nobody else does.

3 THE JUROR: I can't say for 100 percent sure; no,
4 sir.

5 THE COURT: Thank you. Go have a seat,
6 Mr. Robertson.

7 THE JUROR: Okay.

8 THE COURT: You got a motion that he be excused?

9 MS. TOLLEY: (Inaudible.) That his response was
10 that he can do the best he can due (inaudible) to the
11 serious nature of the charges involved in this particular
12 case.

13 THE COURT: What's the State's argument?

14 MR. VOIGHT: When asked more specifically about
15 the State's burden of proof and the State's witnesses and
16 when asked by the Court whether he can be fair, he said
17 yes. When asked more specific questions whether he would
18 hold the State to a lower burden, (inaudible) if he can be
19 fair.

20 THE COURT: Based upon the responses, he said he
21 just wasn't sure he could fair or not based on his
22 mother's experience, I'm going to excuse him for cause.

23 MS. TOLLEY: Okay. (Inaudible).

24 THE COURT: Ma'am, would you come around,
25 please? Give you a little exercise. You can bring your

1 purse if you want to. What's your name?

2 THE JUROR: Jane Clarkin,

3 THE COURT: Do you know your number?

4 THE JUROR: 39.

5 THE COURT: 39. Jane Clarkin. Ms. Clarkin, who
6 was involved in the crime?

7 THE JUROR: I was the victim of an armed robbery.

8 THE COURT: How long ago?

9 THE JUROR: Eight -- nine years ago.

10 THE COURT: Eight, nine years ago. Was it in
11 your home or on the streets or at work or?

12 THE JUROR: I was on actually on vacation in
13 Williamsburg, Virginia.

14 THE COURT: Okay. Just tell me briefly what
15 happened.

16 THE JUROR: I got out of the car at the hotel.
17 And I was about eight steps from the sidewalk and I
18 realized there was a gun in front of me. He had an
19 accomplice (inaudible) my pocketbook.

20 THE COURT: Was there ever anybody arrested or
21 did they catch anybody or do you know?

22 THE JUROR: Not that they contacted me about.

23 THE COURT: How would that affect you sitting on
24 this jury?

25 THE JUROR: (Inaudible) I really don't know

1 because (inaudible) how I thought I would react to this
2 situation. It's not how I reacted, I always thought I
3 would've (inaudible) given anything just to keep him away
4 from me (inaudible), Judge, I would like to think I could
5 be fair and impartial but (inaudible) --

6 THE COURT: Your experience was a traumatic one,
7 I'm sure it was very traumatic. I'm sorry it happened but
8 how do you think it would affect you (inaudible).

9 THE JUROR: (Inaudible), give me an hour to think
10 about it.

11 THE COURT: Unfortunately, I don't have an hour.

12 THE JUROR: (Inaudible) listen open and honest
13 heart (inaudible) experience. I learned from it. It's
14 not the same experience that everyone else has had.

15 THE COURT: Do you think you can be fair to both
16 the State and the Defendant?

17 THE JUROR: Since I'm not completely positive in
18 the interest of both parties, I'm going to have to say no
19 I can't swear that I would be totally impartial.

20 THE COURT: All right. Thank you so very much.
21 You can go (missing voiced backup... (inaudible). Any
22 motions?

23 (***) TRANSCRIBER'S NOTE: After many hours trying
24 to decipher this audio CD, it is not possible to make an
25 accurate record of the remaining jury selection).

RECEIVED
MAR 18 2014
SC COURT of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

J. C. Nicholson, Circuit Court Judge

THE STATE,

RESPONDENT,

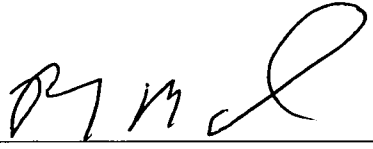
v.

TRAVORIS HURST,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the motion for a reconstruction hearing of appellant's trial transcript in the above referenced case has been served upon Donald J. Zelenka, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 18th day of March, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 18th day of March, 2014.

Barley Reed (L.S.)

Notary Public for South Carolina
My Commission Expires: October 24, 2021



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

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

March 18, 2014

RECEIVED

MAR 18 2014

SC Court of Appeals

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

Re: State v. Travoris Hurst

Dear Ms. Kitchings,

Enclosed are the original and six copies of the motion for a reconstruction hearing or for the granting of a new trial if the record cannot be reconstructed in the above-captioned case.

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

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/kam

Enclosures