

STATE OF SOUTH CAROLINA FILED IN THE COURT OF GENERAL SESSIONS  
COUNTY OF CHARLESTON 14 SEP -3 PM 12:40 FOR THE NINTH JUDICIAL CIRCUIT

State of South Carolina, )  
CLERK OF COURT )  
Case No. 2008-GS-10-4301  
Appellate Case No. 2009-139166

Respondent, BY MH

**ORDER FINDING RECORD CANNOT BE RECONSTRUCTED**

v. )

Travoris Maurice Hurst, )

Appellant. )

This matter comes before the Court by way of a motion to reconstruct the record. On May 14, 2014, the South Carolina Court of Appeals issued an order granting Travoris Maurice Hurst's (hereinafter "Appellant Hurst" or "Appellant") motion to remand to the circuit court for reconstruction of the record. For the reasons that follow, it is the ruling of this Court that the record cannot be reconstructed to allow for meaningful appellate review. See State v. Ladson, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007)

**I. Procedural History**

On May 5, 2008, Appellant Hurst was indicted by the Charleston County Grand Jury for the offense of murder. He proceeded to trial before this Court, and a jury on August 24, 2009. Assistant Solicitors Gregory Voigt and Michael Nelson represented the state, and Juan Tolley represented Appellant. On August 28, 2009, the jury found Appellant guilty, and this Court sentenced him to thirty-nine years imprisonment.

A timely notice of appeal was subsequently filed on Appellant Hurst's behalf, and the Office of Appellate Defense undertook representation. The case was ultimately assigned to Chief Appellate Defender Robert M. Dudek. On March 18, 2014, because significant portions of the trial transcript were unable to be transcribed, Chief Appellate Defender Dudek filed a motion

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with the Court of Appeals to remand the case to the circuit court for reconstruction of the record. The Court of Appeals granted this motion by order filed May 14, 2014.

Subsequently, evidentiary hearings were held before this Court on July 9, 2014, July 23, 2014, and August 14, 2014. Chief Appellate Defender Dudek and Appellate Defender Lara M. Caudy represented Appellant Hurst, and Assistant Attorney General Alphonso Simon, Jr. represented the state.

## II. Summary of the Evidence

On July 10, 2014, the Charleston County Clerk of Court issued a subpoena for Deborah Everett, the court reporter who recorded Appellant's trial, and for any and all recordings, tapes, or notes concerning the trial. At the July 23, 2014 hearing before this Court, Deborah Everett appeared and testified under oath that she had turned over all of her records pertaining to this case to Court Administration.

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This Court subsequently contacted counsel for Deborah Everett and requested Everett turn over the computer and/or hard drive she used when recording the trial in August 2009. As a result of this request, Everett turned over multiple disks and a flash drive containing her records. These disks were forwarded to court reporter Harriet Bennett, who attempted to transcribe the missing portions of the transcript. Some missing portions are unintelligible, while others are missing entirely. The missing portions include, but are not limited to, a cross examination, closing arguments and the jury charges.

At the August 14, 2014 hearing, this Court heard testimony from Juan Tolley, Ebony Walker Wilson, Appellant Hurst, Gregory Voigt, and Michael Nelson. It was apparent from the exhaustive direct and cross examination of these witnesses that they lacked a specific independent recollection of the precise nature of the missing portions of the trial transcript. Also admitted during this hearing were trial notes from Juan Tolley, Gregory Voigt, Michael Nelson, and the Clerk of Court. Additionally, affidavits of Ebony Walker Wilson and Appellant Hurst

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were accepted by this Court.<sup>1</sup> See China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968) (where a portion of the court reporter's notes were lost, the trial judge properly considered affidavits from counsel and the court reporter in reconstructing the record.)

Furthermore, during the August 14, 2014 hearing, the Clerk of Court located three court's exhibits from the trial in her original file. These exhibits were a request from defense counsel to charge mere presence and two notes from the jury sent out while they deliberated. This Court noted for the record that it would not mark a request to charge as an exhibit unless it refused to instruct the jury on the requested charge.

Neither this Court nor the parties involved can recall the specific arguments made by defense counsel in support of her request to charge mere presence nor this Court's reasoning for refusing to give the charge. Notably, no one even recalled whether a request to charge mere presence was made or whether mere presence was ultimately charged to the jury until the Clerk of Court found the court's exhibit near the end of the August 14, 2014 hearing.

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Furthermore, it is apparent from the partial transcript and the notes of counsel that a motion pursuant to Batson v. Kentucky, 476 U.S. 79 (1986), was raised by defense counsel after jury selection and denied by this Court. The precise nature of the Batson motion and arguments raised is unknown as none of the parties involved have a specific independent recollection of the motion.

**III. Ruling**

"South Carolina jurisprudence recognizes the trial court's authority to set the record for appeal." Ladson, 373 S.C. at 324, 644 S.E.2d at 273. This court finds that based on the significant time period that has lapsed since Appellant's trial in August 2009 and the noticeable lack of any independent recollection from the parties involved the record cannot be reconstructed

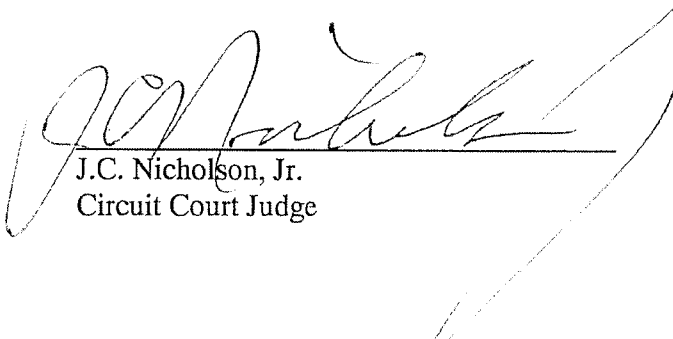
<sup>1</sup> The affidavit of Ebony Walker Wilson was redacted because it contained matters not relevant to reconstructing the record.

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to allow for meaningful appellate review, particularly in light of our issue preservation rules. Ladson, 373 S.C. at 325-326, 644 S.E.2d at 273-274. This is especially true given that there is a complete lack of a record concerning Appellant Hurst's motion pursuant to Batson v. Kentucky, 476 U.S. 79, and Appellant's Hurst's request to charge mere presence where it is undisputed a "hand of one is the hand of all" instruction was given to the jury.

Therefore, this Court holds the record cannot be reconstructed to allow for meaningful appellate review. See Adams v. H.R. Allen, Inc., 397 S.C. 652, 656-657, 726 S.E.2d 9, 12 (2012) (citing Ladson, 373 S.C. at 325, 644 S.E.2d at 274).

AND IT IS SO ORDERED.




J.C. Nicholson, Jr.  
Circuit Court Judge

Charleston, South Carolina

This 9 day of August, 2014

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