

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

ESAIVEUS F. BOOKER,

APPELLANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-000207

**MOTION FOR AN ORDER TO RECONSTRUCT
THE RECORD OF CLOSING ARGUMENTS FROM
APPELLANT'S TRIAL**

The above named Appellant, through his undersigned counsel, would respectfully move this Court for a remand to the Greenville County Court of General Sessions for a reconstruction of the record of the closing arguments held in Appellant's trial. This motion is made pursuant to China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968) and State v. Ladson, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007). In support of this motion, counsel would respectfully show the Court:

1. Appellant stood trial along with three co-defendants on January 7-11, 2013 before the Honorable Edward W. Miller and a jury. Appellant was convicted of seven counts of attempted murder, one count of conspiracy, and one count of assault and battery by a mob second degree.

RECEIVED
SEP 05 2014
SC Court of Appeals

2. A timely notice of appeal was filed January 14, 2013 with the South Carolina Court of Appeals. The Division of Appellate Defense of the South Carolina Commission on Indigent Defense was appointed to handle Appellant's appeal and the appeals of his three co-defendants.

3. Upon receipt of the trial transcript, the four appellate attorneys learned that the closing arguments could not be transcribed due to an equipment malfunction. See Exhibit A (Court reporter's letter).

4. Counsel submits that a record of the closing arguments is necessary in order for Appellant to have a meaningful, fair and complete appeal. The closing arguments may be relevant to issues that Appellant plans to raise in the brief. The record of the closing arguments needs to be reconstructed to determine the substance of the arguments and any objections made.

5. In China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968), the South Carolina Supreme Court held that where there is a disagreement as to what the record on appeal should contain, the duty and responsibility of settling the question rests upon the trial judge. In that case, portions of the stenographic notes of the trial from the court reporter were lost before transcribed. The trial judge relied on affidavits submitted by the court reporter and counsel in determining what transpired. The Supreme Court held that the trial judge had no independent recollection of the incident so he correctly relied on the affidavits submitted.

6. Counsel for Appellant submits that counsel for co-defendant Michael Williams and counsel for co-defendant Raymond Young have made similar motions with this Court. Counsel submits that if the motions are granted, one reconstruction hearing could be held as to all three Appellants.

Based on the above showing, Appellant respectfully requests that his case be remanded to the Greenville County Court of General Sessions for a reconstruction of the record of the closing arguments made at trial by the State and the co-defendants. Counsel further requests that the appeal be held in abeyance pending the outcome of this motion.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

Attorney for Petitioner

This 5th day of September, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

ESAIVEUS BOOKER,

APPELLANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion for an Order to Reconstruct the Record of Closing Arguments from Appellant's Trial in the above referenced case has been served upon opposing counsel, Salley W. Elliott, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Esaiveus Booker, #354048 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 5th day of September, 2014.


Carmen V. Ganjehsani
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 5th day of September, 2014.

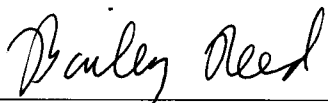

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021.

Exhibit A

Caroline Hiskell

Chiskell@sccourts

To: *Desiree Allen*
Court Administration
1015 Sumter Street
Columbia, South Carolina 29201

April 17, 2014

RE: *State of South Carolina vs.:*
Raymond Lewis Young 2011-GS-23-8010-8018
Escaiveus Booker 2012-GS-23-3041
Kinjta Kadeem Sadler 2011-GS-9239
Michael W. Williams 2012-GS-23-3838

RECEIVED

APR 21 2014

SC OFFICE OF
APPELLATE LITIGENSE

Dear Ms. Allen,

In response to the request for an explanation as to the equipment malfunction presented in the above delivered transcript, since I am not a digital or computer expert, the best that I can surmise is there was a bad sector on the SanDisk that I use for my digital audio back-up. The audio and the steno machine are linked by a cable which allows the system to combine succinctly and give me an advantage when I have to read back in court or during transcription. The bad sector in the disc read "format error" and shut down the entire system. I didn't notice it until the few minutes at the end of the closing and the beginning of jury charge. When I did, I put in a new disk and rebooted the system. Everything returned to normal for the remainder of the trial.

The way this system was set up worked perfectly for me before this and I haven't had a problem since, but after that incident I purchased a completely new and separate digital recording device that remains on and untouched for the entire length of any trial or hearing.

With my limited knowledge, this is the only way I can explain why the closing arguments in the above transcript could not be transcribed.

Sincerely,

Caroline Hiskell

CC: *Kimberly McCall*
SCDID



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

September 4, 2014

RECEIVED

SEP 05 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: The State v. Esaiveus Booker

Dear Ms. Kitchings:

Enclosed are an original and six copies of the Motion for an Order to Reconstruct the Record of Closing Arguments from Appellant's Trial in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,

Carmen V. Ganjehsani
Appellate Defender

CVG/brr

Enclosure

cc: Salley W. Elliott, Esquire
Mr. Esaiveus Booker, #354048