

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Charleston County  
J. C. Nicholson, Jr., Circuit Court Judge  
Appellate Case No. 2009- 139166

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**RECEIVED**

OCT 17 2014

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

TRAVORIS MAURICE HURST,

Appellant.

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**RESPONDENT'S MEMORANDUM REGARDING STATUS OF APPEAL**

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Comes now Respondent, through undersigned counsel, and hereby submits that in light of trial court's findings that the record could not be reconstructed, Appellant should be granted a new trial. Respondent further submits that the trial court's determination that the record could not be reconstructed is supported by the reconstruction hearing record. Due to the inability to reconstruct the record regarding the arguments and rulings made during a motion pursuant to Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712 (1986), meaningful appellate review by this Court would not be possible regarding the Batson issue. Thus, Respondent submits a new trial is warranted in this case.

## **Procedural History**

Appellant Travoris Hurst ("Appellant") was indicted for the murder of Roni Ricadez Perez. He was tried by a jury before the Honorable J.C. Nicholson, Jr., Circuit Court Judge, on August 24-28, 2009. Appellant was present and was represented by Juan Watson Tolley, Esquire. The State was represented by Assistant Solicitors Gregory Voigt and Michael Nelson, both of the Solicitor's Office for the Ninth Judicial Circuit. The court reporter at trial was Deborah Everett. On August 27, 2009, Appellant was found guilty of murder. On August 28, 2009, Judge Nicholson sentenced Appellant to thirty-nine years confinement for the conviction.

Appellant subsequently timely served and filed a Notice of Appeal. On appeal, Appellant is represented by Robert M. Dudek, Chief Appellate Defender with the South Carolina Commission of Indigent Defense, Division of Appellate Defense, and Laura M. Caudy, an Assistant Appellate Defender with the Division of Appellate Defense.

The transcript in this case was transcribed by Cheri L. Young, Circuit Court Reporter on September 6, 2010. Additional transcripts from the trial were requested on October 7, 2010. On September 12, 2012, Appellant filed a Petition for Order to Reconstruct the Record of the Sentencing Portion of Appellant's Trial Transcript. In the Petition, Appellant specifically requested an Order to reconstruct the sentencing hearing that was held on August 28, 2009. On November 13, 2012, the State filed a Return to the Petition indicating it had no objection to an Order for Reconstruction of the sentencing hearing. Appellant filed a Reply on January 24, 2013. By Order filed February 14, 2013, this Court granted the petition, held the appeal in abeyance, and partially remanded the action to the circuit court for a reconstruction hearing. Through

letters dated September 3 and September 4, 2013, the parties stipulated that Appellant had received a sentence of thirty-nine years confinement, and the abeyance would no longer be needed. By Order filed September 5, 2013, this Court indicated the appeal was no longer being held in abeyance.

On March 18, 2014, Appellant filed a Motion for a Reconstruction Hearing or for the Granting of a New Trial if the Record Cannot be Reconstructed. In the Motion, Appellant identified five problems with the transcript:

1. The jury instruction given by the trial judge is not in the transcript;
2. The closing arguments of both the solicitor and defense counsel are not in the transcript;
3. The majority of voir dire was not transcribed, and parts are listed as "inaudible;"
4. All of jury selection is missing from the transcript;
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."

On March 31, 2014, the State filed a Return to the Motion for a Reconstruction Hearing or for the Granting of a New Trial if the Record Cannot be Reconstructed. In the Return, the State had no objection to an Order to Remand for Reconstruction, but contended that an order for a new trial would be premature until Appellant showed after reconstruction that he would be deprived of meaningful appellate review after identifying a specific appellate claim that this Court would be unable to review effectively using the reconstructed record.

By Order filed May 14, 2014, this Court granted the motion to remand to the circuit court for reconstruction of the record. Pursuant to the Order, three hearings were

held before Judge Nicholson. The first hearing, held on July 9, 2014, was a status conference in which the reconstruction hearing was scheduled. Mr. Dudek was present on behalf of Mr. Hurst. Assistant Attorney General Alphonso Simon, Jr. was present on behalf of the State. The attorneys involved in the trial, Ms. Tolley, Mr. Voigt, and Mr. Nelson, were also present. The reconstruction hearing was set for August 14, 2014. Also, pursuant to Judge Nicholson's request and agreement of the parties, Ms. Everett was subpoenaed for a July 23, 2014 hearing to see if she had any additional recordings or materials that would aid in reconstructing the missing portions of the record.

The second hearing was held on July 23, 2014. Mr. Dudek was present on behalf of Mr. Hurst. Mr. Simon was present on behalf of the State. Ms. Everett appeared pursuant to the subpoena. At this hearing, Ms. Everett testified that she had no documents or recordings in her possession relating to this case. She further testified that all other recordings and documentation relating to this case were provided to Court Administration.

On August 14, 2014, the reconstruction hearing was held before the Honorable J.C. Nicholson, Jr., Circuit Court Judge. Appellant was present and was represented by Mr. Dudek and Ms. Caudy. The State was represented by Mr. Simon. Several witnesses, including Ms. Tolley, Mr. Hurst, Mr. Voigt, Mr. Nelson, and Ebony Walker Wilson (a witness from the trial) testified. On September 3, 2014, Judge Nicholson filed an Order Finding Record Cannot Be Reconstructed.

## Argument

The State submits that Appellant is entitled to a new trial because the record in this case would not allow for meaningful appellate review to at least one issue that was raised at trial that was not contained in the transcript. Specifically, the record regarding the hearing on a Batson motion is not in the transcript, and the record on the motion could not be reconstructed. In State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 273-74 (Ct. App. 2007), this Court noted that the case law of this State would require a reconstructed record on appeal to allow for meaningful appellate review. "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.'" Id., 644 S.E.2d at 274 (internal quotations omitted).

At the reconstruction hearing, it was established that Appellant challenged the State's use of peremptory strikes under Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712 (1986), after the jury selection. While with the assistance of his notes, Mr. Voigt could recall the reasons he would have given for the strikes utilized by the State, none of the witnesses could independently recall any of the exact arguments made in support of the Batson motion or against the Batson motion. Furthermore, none of the witnesses could recall how the motion was handled by the trial court, except that witnesses did recall the Batson motion was denied. In light of the testimony at the reconstruction hearing and the inability to reconstruct the arguments and reasoning that was given relating to the denial of the Batson motion, Respondent submits the trial court was correct in finding that the record as it relates to this issue could not be properly reconstructed.

Since the record of the argument could not be reconstructed, the current record would not permit for meaningful appellate review of the Batson issue, and the inability to reconstruct the record was not the due to some fault or unreasonable delay on the part of the appellant (Cf. State v. Serrette, 375 S .C. 650, 654 S.E.2d 554 (Ct.App.2007) (tapes of trial destroyed during the ten year delay between trial in absentia and sentencing while appellant was a fugitive)), Respondent submits a new trial is warranted.

Respectfully Submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Senior Assistant Deputy Attorney General

ALPHONSO SIMON JR.  
Assistant Attorney General  
Bar No. 74713

P.O. Box 11549  
Columbia, SC 29211  
(803) 734-6305

October 17, 2014

By:   
Alphonso Simon Jr.  
**ATTORNEYS FOR RESPONDENT**

**STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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Appeal from Charleston County  
J. C. Nicholson, Jr., Circuit Court Judge  
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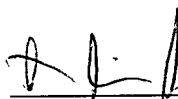
**PROOF OF SERVICE**

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I, Alphonso Simon, Jr., counsel for the Respondent, certify that I have served the within Memorandum Regarding Status of Appeal on Appellant by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorneys of record, Robert M. Dudek, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201; and to Lara Caudy, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201

I further certify that all parties required by Rule to be served have been served.

This 17<sup>th</sup> day of October, 2014.



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ALPHONSO SIMON, JR.

Office of Attorney General  
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(803) 734-6305

ATTORNEYS FOR RESPONDENT



ALAN WILSON  
ATTORNEY GENERAL

October 17, 2014

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**SC Court of Appeals**

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

Re: *The State v. Travoris Maurice Hurst*  
Appeal from Charleston County  
General Sessions Case No. 2008-GS-10-4301  
Appellate Case No. 2009-139166

Dear Ms. Kitchings:

As per this Court's letter dated October 7, 2014 instructing the parties to submit a memorandum addressing their updated positions regarding the appeal, enclosed for filing in your office is an original and six (6) copies of the Respondent's Memorandum Regarding Status of Appeal in the above-referenced case, along with a Certificate of Service.

Thank you for your assistance in this matter.

Sincerely,

Alphonso Simon, Jr.  
Assistant Attorney General

AS/dmd

Enclosures

cc: Robert M. Dudek, Esq. (w/ two copies of encls.)  
Lara Daudy, Esq. (w/ two copies of encls.)  
Trisha Allen, Victim Services (w/copy of encls.)