



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

December 10, 2014

The Honorable Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: State v. Sebastian Hepburn  
Appellate Case No. 2012-213403

Dear Ms. Kitchings:

On November 14, 2013, this Court granted my motion to reconstruct the record in the above case. In preparing for the remand hearing I spoke with trial counsel, Robert Ray, and the prosecutor, Lisa Bentley. Neither could remember any objections being made during the missing portions of the transcript. Based on the fact that the only parts of the bench trial transcript that are missing are the post trial motions, closing arguments, pronouncement of the verdict and sentencing by the Court and based on the fact that it appears that no objections were made during these portions of the trial, I determined that, for purposes of the direct appeal, those portions could be reconstructed by affidavits submitted by the attorneys rather than requiring a hearing. I have attached the affidavits prepared by trial counsel and the prosecutor.

I sent copies of the attached affidavits from the attorneys to the trial judge, the Honorable Larry B. Hyman and asked for Judge Hyman's approval to submit the affidavits to this Court instead of requiring a reconstruction hearing. I have attached a copy of the letter to Judge Hyman. On December 8, 2014, I received a phone call from Judge Hyman's law clerk, Drew Postal, indicating that the proposed procedure of submitting the affidavits to this Court met with Judge Hyman's approval. Assistant Deputy Attorney General Salley Elliot was copied on all correspondence.

I respectfully request that this Court accept the affidavits in lieu of requiring a reconstruction hearing as it appears that no objections were made during the missing portions of the transcript of this bench trial. I understand that Assistant Deputy Attorney General Salley Elliot consents to this procedure. I hope the proposed procedure meets with this Court's approval. Please do not hesitate to contact me with any concerns.

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DEC 11 2014

**SC Court of Appeals**

Sincerely,



Kathrine H. Hudgins  
Appellate Defender

KHH/brr

CC: The Honorable Larry B. Hyman  
1301 Second Ave., Suite 3B76  
Conway, SC 29526

Salley Elliott  
Assistant Deputy Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Lisa A. Bentley  
Assistant Solicitor, Thirteenth Judicial Circuit  
305 E. North Street, Suite 325  
Greenville, SC 29601

Robert C. Ray, Esquire  
306 A Mills Ave.  
Greenville, SC 29605

Sebastian Hepburn, #353163  
Turbeville Correctional Institution P.O. Box 252  
Turbeville, SC 29162

Encl.



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

December 1, 2014

The Honorable Larry B. Hyman  
1301 Second Ave., Suite 3B76  
Conway, SC 29526

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DEC 11 2014

**SC Court of Appeals**

RE: State v. Sebastian Hepburn, Appellate Case No. 2012-213403

Dear Judge Hyman:

I represent Sebastian Hepburn in the appeal for his conviction for criminal sexual conduct with a minor second degree, indictment #2011-GS-23-2699. You presided over Mr. Hepburn's bench trial on November 8, 2012, in Greenville County. In preparing for the appeal I ordered the trial transcript. Unfortunately, when I received the transcript, the post trial motions, closing arguments, pronouncement of the verdict and sentencing by the Court were not transcribed. On page 237 of the trial transcript the court reporter notes, "Post-trial Motions, Closing Arguments, Verdict and Sentencing of the Court are unretrievable due to equipment malfunction that occurred after the conclusion of the proceedings." As a result, I filed a motion to remand for a reconstruction hearing. On November 14, 2013, the Court of Appeals granted the motion and I have attached a copy of the order.

In preparing for the remand hearing I spoke with trial counsel, Robert Ray, and the prosecutor, Lisa Bentley. Neither could remember any objections being made during the missing portions of the transcript. Based on the fact that the only parts of the bench trial transcript that are missing are the post trial motions, closing arguments, pronouncement of the verdict and sentencing by the Court and based on the fact that it appears that no objections were made during these portions of the trial, I determined that, for purposes of the direct appeal, those portions could be reconstructed by affidavits submitted by the attorneys rather than requiring a hearing. I have attached the affidavits prepared by trial counsel and the prosecutor. With your approval, I would like to send these affidavits to the Court of Appeals and ask the Court to accept the affidavits rather than requiring a remand for a reconstruction hearing.

I hope that this procedure meets with your approval. I have spoken with Assistant Deputy Attorney General Salley Elliott and she consents with the proposed procedure. If you would be so kind as to contact me and Ms. Elliott in regard to how to proceed, I would

appreciate it. Thank you for your assistance in this matter. I hope that this will save time for the parties involved as well as provide Mr. Hepburn with what he needs for purposes of the direct appeal process. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Kathrine H. Hudgins  
Appellate Defender

KHH/kh

CC: Salley Elliott  
Assistant Deputy Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Lisa A. Bentley  
Assistant Solicitor, Thirteenth Judicial Circuit  
305 E. North Street, Suite 325  
Greenville, SC 29601

Robert C. Ray, Esquire  
306 A Mills Ave.  
Greenville, SC 29605

Encl.

53  
Elliott

The South Carolina Court of Appeals

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The State, Respondent,

NOV 15 2013

v.

ATTORNEY GENERALS  
OFFICE

Sebastian James Hepburn, Appellant.

Appellate Case No. 2012-213403

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SC Court of Appeals

ORDER

Appellant has filed a motion to remand to the circuit court for reconstruction of the record. The motion is granted and this case is remanded to the Greenville County Court of General Sessions. Counsel for Appellant is ordered to contact counsel for Respondent and the circuit court judge, the Honorable Larry B. Hyman, Jr., within ten days of this order to schedule such hearings as the circuit court judge deems appropriate. Counsel for Appellant shall provide an update to the clerk of this court no later than fifteen days from the date of this order, with a copy to counsel for Respondent.

*Joseph M. Curleton AS*  
FOR THE COURT

Columbia, South Carolina

cc:  
Salley W. Elliott  
Alan McCrory Wilson  
Kathrine Haggard Hudgins

FILED  
11/14/13

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

APPELLATE CASE NO. )  
2012-213403 )

State of South Carolina, )

Plaintiff, )

v. )

Sebastian James Hepburn )

Defendant. )

AFFIDAVIT

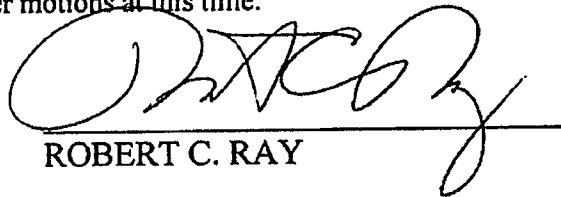
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**SC Court of Appeals**

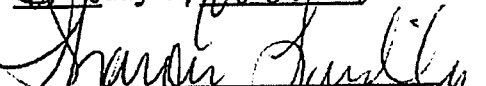
PERSONALLY APPEARED BEFORE ME, the undersigned Affiant who, first being duly sworn affirms and states as follows:

1. My name is Robert C. Ray. I was the attorney for Sebastian Hepburn in a General Sessions bench trial before Judge Hyman on November 8, 2014. Lisa Bentley represented the State.
2. My recollection is that I objected to Mr. Hepburn's statement to the police. Judge Hyman overruled my objection and allowed the statement into evidence after a Jackson v. Denno hearing was held by Judge Hyman.
3. As I remember the case, the statements by Mr. Hepburn to the police are what got him convicted.
4. In a post trial motion, I renewed my objection as to Mr. Hepburn's statements being admissible. I also moved for a directed verdict in another post-trial motion.
5. I don't remember any other motions at this time.



ROBERT C. RAY

SWORN to before me this  
10th day of July, 2014

  
Notary Public for South Carolina

My Commission Expires: July 28/2018

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
 )  
 )  
V. )  
 )  
SEBASTIAN HEPBURN, )  
 )  
 )  
DEFENDANT )

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT 2011-GS-23-2699

AFFIDAVIT OF ASSISTANT SOLICITOR  
LISA BENTLEY

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**SC Court of Appeals**

The Affiant, having been sworn, testifies as follows:

1. I prosecuted Sebastian Hepburn in a bench trial on November 8-9, 2012.
2. I was the sole prosecutor at trial.
3. To the best of my recollection I did not make any post-trial motions on behalf of the State.
4. To the best of my recollection there were no objections to my closing argument by Mr. Ray.
5. To the best of my recollection I did not make any objections to the closing argument of Mr. Ray.
6. To the best of my recollection, all previously made defense objections were properly renewed at the conclusion of trial. I recall that Mr. Ray did move for a directed verdict.
7. I recall that the pronouncement of the sentence immediately followed the verdict.
8. I recall that the State did not have any objection to sentencing. I do not recall Mr. Ray having an objection to the sentence, but would defer to his recollection on this issue.

Lisa Bentley

Lisa Bentley  
Assistant Solicitor  
SC BAR # 77787

Sworn to me by:

Karen Williams  
Notary Public for South Carolina

On Nov 14<sup>th</sup>, 2014

My Commission Expires: 8/19/2021