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February 10, 2015

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

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FEB 12 2015

**SC Court of Appeals**

Re: State of South Carolina v. Kathy Leonard Revan  
Appellate Case No. 2014-000161

Dear Ms. Kitchings:

The Court Reporter in this case has written me back and informed me she could not transcribe the statement, and the 911 call, published during this client's jury trial because she did not "take them down" when they were played. I subsequently called the Court Reporter, and asked why she couldn't transcribe these items from her back-up system. At that time, she said she simply could not do that. Without being argumentative about the point, I told her that I didn't understand the point of having a back-up system if court reporters can't provide a certified record transcribed from a back-up system. She then remarked that she might not have even had a back-up for this trial because she sometimes did not use a back-up system.

I next received a letter from the Court Reporter, a copy of which is attached, saying that she didn't have the back-up recording for this trial because it had been more than thirty (30) days since she delivered the trial transcript. Without wandering too far off point, this highlights another concern I have long had about the rule that permits court reporters to destroy back-ups after thirty days. Due to my court schedule, I didn't discover this problem until after those thirty (30) days were up. In most cases, it is virtually impossible for me to receive a record, have copies made, get a copy to the client and get their feedback on the accuracy of the record within that time period. The vast majority of the time I was not trial counsel so I have no way to know whether the record is complete or inaccurate. I wish that rule could be revisited with these problems in mind. I know that in over fifteen years (15) I spent at Appellate Defense, clients often raised questions about the accuracy of a transcript after the thirty (30) days had run.

I expressly asked this Court Reporter if she could transcribe these two portions of this trial record from the recordings which were introduced as State Exhibits after they were published in open court. Once again, the Court Reporter's position was that she could not transcribe and certify these portions of the record since she did not take them down stenographically when they were

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played in court. I expressed the opinion that since she marked these recordings as exhibits at trial, transcribing them would be no different than occasions when court reporters are called upon to produce a record from their back-up system. She then informed me that I would have to pay someone else to do it. I do not understand why the Court Reporter would not have taken down these portions of the record at the time these recordings were published in open court. I have been actively engaged in appellate practice for thirty-five (35) years and this is *the first time* I have ever run into this problem. Not having a transcript of these portions of this record would make it very difficult to draft an appellate brief on issues that require a close evaluation of all the evidence adduced at trial. It is my understanding that my client's statement is approximately three (3) hours long. I can't effectively summarize that statement, or ask for the Court's attention to specific portions of it, without a transcript. Without an official transcript of these recordings, I can't imagine how to insure that we are all focusing "on the same page" (if you will) either in our briefs, *or* in whatever appellate arguments might be held in this matter, without an official transcript.

It would be my position that if anyone is going to have to transcribe and certify these exhibits for inclusion in this record it should be the Court Reporter who transcribed the trial record. While I completely understand her reluctance to transcribe these recordings without the benefit of stenographic notes, it was after all she who decided not to "take down" these portions of what was heard in that courtroom during this trial. She certainly could note in her certification that those portions of the record were transcribed from Exhibits and without the benefit of stenographic notes taken contemporaneously with the publication of these recordings in open court. It goes without saying that she would be paid for these transcriptions just as she is for any transcript requested from her.

In the alternative, I would ask that this appeal remain stayed long enough for me to engage a private transcription service to transcribe these recordings. I have attempted to locate a retired court reporter who would be willing to take on this task. Thus far, I have not been able to line anyone up. For that reason, I assume I would have to resort to a private court reporter service should the Court decline to direct the Court Reporter from this trial to transcribe these recordings.

For now, I will await further instruction from the Court. I appreciate the Court's assistance and remain,

Yours sincerely,



Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

Enclosure

cc: Salley W. Elliott, Senior Assistant Deputy Attorney General (w/enclosure)  
Desiree Allen, Court Services Manager for Court Administration (w/enclosure)

p.s. (The Honorable Jenny Kitchings and Salley W. Elliott) While I am addressing this subject, allow me to bring up another issue that has nothing to do with this case. With increasing frequency I have become aware that Court Reporters are using third party transcribers to prepare transcripts for them. I thoroughly understand why this is sometimes necessary *and* I realize that this practice is not prohibited by the rules governing court reporters. What concerns me is that I as appellate counsel rarely *know* whether a record is transcribed by someone other than the court reporter. I don't know if the official court reporter who certified the record actually typed it. If the court reporter didn't type the record themselves, I believe the certificate should have to reflect that information, provide the name of the party who prepared the record, and indicate that the "official" court reporter proofed the transcript and confirmed its accuracy. I realize this is not a popular position to take, but how can a court reporter certify a transcript if they didn't type or proof? For my part, I am starting to request that I be notified in writing if someone other than the court reporter transcribed the records I order. I am requesting that records that are not typed by the court reporter be certified by both the court reporter *and* the transcriber, and that the official court reporter certifies that she has proofed the record for accuracy. I would hope that the Supreme Court would consider some uniform policies on this issue in the future. Ideally, I would hope that court reporters would be required to maintain back-up recordings for longer than thirty (30) days *particularly* in situations where the record was transcribed by someone other than the court reporter. I bring this issue to your attention only because I know you two are more likely to have the opportunity for input on this issue than I ever will be! Thanks.

A handwritten signature in black ink, appearing to read "Sara". The signature is written in a cursive, flowing style with a large initial "S" and a long, sweeping tail.



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**SC Court of Appeals**

STATE OF SOUTH CAROLINA

THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT

STACY S. JOHNSON, RPR  
CIRCUIT COURT REPORTER  
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January 28, 2015

Tara Dawn Shurling, Esquire  
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RE: State vs. Kathy Revan; 2011-GS-30-1625; 1626; 1627

Dear Ms. Shurling,

In regard to your voicemail of January 26, 2015, I am writing to inform you that per Rule 607 (i), SCACR, court reporters are only required to keep the primary and backup recordings for a period of 30 days after the transcript is delivered. The transcript was delivered on April 30, 2014; therefore, these records were no longer available after May 30, 2014.

As the transcript indicates, and as is the custom of the Judicial Department court reporters, recorded videotapes and audio tapes that are played during the court proceedings and marked as exhibits are not taken down stenographically by the court reporter, and we are unable to certify those proceedings.

If you have any questions or I can be of further assistance, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Stacy S. Johnson".

Stacy S. Johnson, RPR  
Circuit Court Reporter

cc: Court Administration



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 SC 290



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