

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LAURENS COUNTY  
Court of General Sessions  
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge  
Lower Court Case Nos. 2011-GS-30-1625, 1626, 1627

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Appellate Case No. 2014-000161

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**RECEIVED**

JUN 23 2015

**SC Court of Appeals**

STATE OF SOUTH CAROLINA,

v.

RESPONDENT.

KATHY LEONARD REVAN,

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APPELLANT.

**RENEWED MOTION  
FOR ADDITIONAL TRANSCRIPT**

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NOW COMES Appellant in the above captioned matter, requesting that the Court Reporter from Appellant's trial be directed to supplement the transcript provided to Appellate Counsel by providing a transcription of audio exhibits introduced as State's Exhibits No. 9, 10 and 11. In support of this motion, Appellant would show unto this Court the following. Appellant was tried on charges for Murder and Attempted Murder in the Laurens County Court of General Sessions on January 13-17, 2014. The Honorable Eugene C. Griffith Jr., presided over that trial. The Appellant was represented by Kim R. Varner, Esquire and Evan Bramhall, Esquire. The court reporter for that proceeding was Stacy S Johnson, RPR.

Undersigned Counsel was retained to perfect a direct appeal in this matter. When Counsel received the 860 page transcript of this trial, she discovered that three important audio exhibits played during this trial had not been transcribed as part of the record. During Appellant's trial, two DVD discs containing the recording made of her lengthy interview by law enforcement were played for the jury and were introduced as State's Exhibits Nos. 9 and 10. In addition, the 911 call made in connection with this case was published during the Appellant's trial and the recording of that call was introduced into evidence as State's Exhibit No. 11. Tr. p. 387, l. 11 - p. 391, l. 9. Like Appellant's interview, the content of the 911 call recording was not transcribed

and made a part of the trial transcript. While the DVD discs, containing the recordings of Appellant's interview by law-enforcement, were played for the presiding judge during Appellant's immunity hearing pursuant to S.C. Ann Section 16-11-440, they were not introduced into evidence until the jury trial portion of this record. The content of the interview recorded on State's Exhibits Nos. 9 and 10 was not transcribed as part of the record of either the immunity hearing or the jury trial.

By motion filed September 30, 2014, Appellate Counsel advised this Honorable Court of the problem with this transcript and requested that the court reporter be directed to transcribe these exhibits.<sup>1</sup> *See*, Attachment A. In said motion, which was not opposed by the State, Appellant requested that this matter be returned to the court reporter with instructions to provide a transcript of the audio exhibits introduced during this trial. By Order dated November 20, 2014, this Honorable Court granted Appellate Counsel's motion and gave Appellate Counsel sixty (60) days to "consult with the court reporter regarding the transcription of the exhibits." *See*, Attachment B.

Appellate Counsel wrote this court reporter concerning these issues on December 11, 2014. *See*, Attachment C. By letter dated January 2, 2015, the court reporter advised Appellate Counsel that she could not, or would not, transcribe the audio exhibits in question because they had not been "taken down" by her during the trial. *See*, Attachment D. Appellate Counsel subsequently called this court reporter and inquired as to why she could not have transcribed these audio exhibits from her back up recordings from when they were published in open court. At that time the court reporter advised Appellate Counsel that it was court reporter policy not to "take down" such audio exhibits when they are published in open court and that she did not

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<sup>1</sup> Appellate Counsel's motion also addressed the fact that the transcript provided indicated that Disc 1, the first portion of Appellant's interview, was played for the Court during Appellant's immunity hearing, but was silent as to Disc 2, which contained the rest of that interview. Likewise, Appellate Counsel noted that although the 911 call was mentioned during the immunity hearing, the record did not reflect the recording of that call being played for the Court during the immunity hearing. By correspondence dated January 2, 2015, the Court Reporter confirmed that both parts of Appellant's recorded statement were played for the Court during the Immunity hearing. She provided Appellate Counsel a replacement page 34 containing this correction. The Court reporter further confirmed that the recording of the 911 call *was not* played for the Court during the Immunity hearing.

always use a backup system. On January 26, 2015, Appellate Counsel left a phone message requesting that this court reporter give her something in writing confirming that she had checked her records, and confirmed that she did not have backup recording for this trial. *See*, Attachment E. In the telephone conversation referenced in the January 26, 2015 entry to Appellate Counsel's Last Action Log, Attachment E, Appellate counsel pointed out that the court reporter could obtain a certified copy of these recordings from the Clerk of Court. The court reporter then repeated her earlier position that Appellate Counsel would have to hire an independent stenographer to create such a record because court reporters "don't do that." *See*, Attachment D.

On February 10, 2015, Appellate Counsel wrote this Honorable Court and renewed her request that the court reporter be required to produce a written transcript of the audio exhibits in question from the recordings introduced into evidence during this trial. *See*, Attachment G.

Appellant Counsel now formally renews her original motion and submits that the record provided to her by the court reporter in this matter is not sufficient. Counsel now requests an Order from this Honorable Court directing the court reporter in this matter to prepare the necessary transcript of these audio exhibits. In support of that request Appellate Counsel would respectfully ask that this Court note the following.

Appellate Counsel can not recall, in her more than 36-year-old career as an appellate lawyer, coming across the problem before this Honorable Court in this motion. Consultation in other appellate lawyers leads Appellate Counsel to believe this has only recently become a problem. Apparently as a result of some sort of informal policy, court reporters now routinely do not "take down" audio recordings played in open court even if those recordings are introduced as exhibits at trial. In her letter dated January 2, 2015 (Attachment F) this court reporter refers to this policy as "the custom of Judicial Department court reporters."

Where the issues presented on appeal require the close examination of the content of published audio exhibits, the lack of an official transcript of those exhibits will result in many problems; not the least of which will be a tremendous waste of this Court's resources. A

complete and thorough review of such issues will require that the judges on the panel assigned to the appeal, as well as their law clerks and the Court's staff attorneys, personally listen to these lengthy exhibits. Consideration of the merits of such issues on appeal would inevitably result in debate concerning everyone's memory concerning the content of these exhibits based upon their personal review of the recordings. The absence of an official transcript of these recordings would make it impossible to quickly and efficiently resolve such differences of recollection and opinion. Likewise, the lack of a transcript of such recordings will hamper the Court in drafting an appropriate opinion on the appeal. On the front end, the lack of an official transcript of these exhibits will require that the parties each hire an independent stenographer to transcribe these exhibits. That practice would inevitably result in disputes between the parties concerning which transcript is accurate. Likewise, without a transcript, it would be virtually impossible for the appellate lawyers *on both sides* to draft thorough and persuasive briefs referencing necessary portions of the evidence adduced at trial; *including relevant portions of recordings published at trial.*

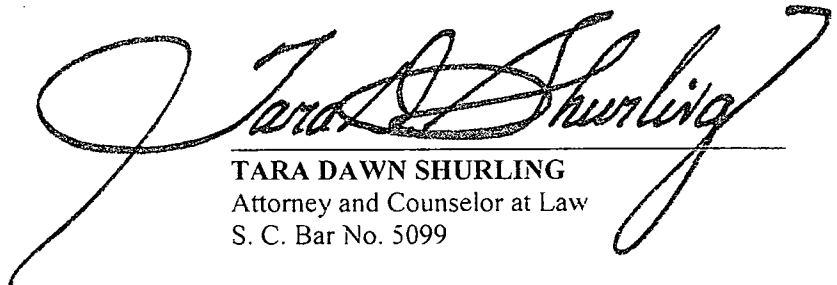
Appellate Counsel would respectfully advise this Honorable Court that the record of Appellant's trial does not reflect any complaints or comments from jurors concerning their inability to adequately hear or understand the content of these recordings at the time they were published in open court. It is, therefore, reasonable to believe that the court reporter assigned to this trial would be able to produce a transcript of these exhibits from the audio recordings introduced into evidence during Appellant's trial. Although the court reporter does not have a backup recording of the portion of the trial when these exhibits were published, she has the equivalent in that she would be transcribing the actual recording which she may listen to as often as necessary to clarify any portion of the recording she might initially find difficult to understand.

Appellate Counsel recognizes that transcribing the audio recordings in question may not be a pleasant task. She would assert, however, that producing a complete and accurate transcript

of everything heard in open court during a trial is the responsibility of the court reporter assigned to that case. For that reason, Appellate Counsel reluctantly asserts that the responsibility for producing a written transcript of audio exhibits played in open court should fall to the assigned court reporter.

For all the foregoing reasons, Appellate Counsel here in now respectfully asks for this Honorable Court's order directing the court reporter in this case to transcribe State's Exhibits Nos. 9, 10 and 11 for inclusion in the official record of Appellant's trial.

Respectfully submitted, .

A large, stylized handwritten signature in black ink, reading "Tara Dawn Shurling". The signature is written over a horizontal line.

**TARA DAWN SHURLING**  
Attorney and Counselor at Law  
S. C. Bar No. 5099

ATTORNEY FOR APPELLANT.

June 23, 2015

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LAURENS COUNTY  
Court of General Sessions  
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

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Appellate Case No. 2014-000161

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STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

KATHY LEONARD REVAN,

APPELLANT.

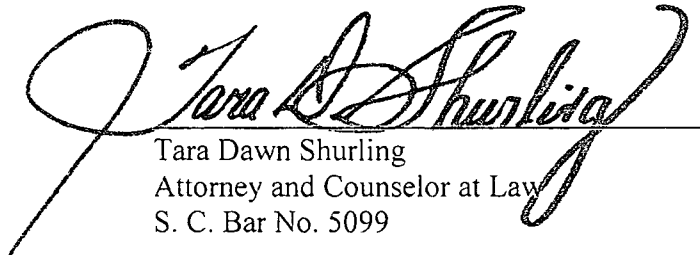
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**CERTIFICATE OF SERVICE**

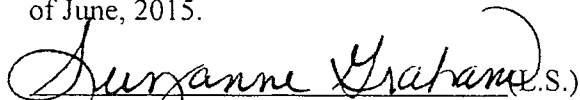
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The undersigned attorney hereby certifies that a copy of the Renewed Motion for Additional Transcript in the above-entitled case has been served upon opposing counsel by depositing in the U.S. Mail, postage prepaid, this 23<sup>rd</sup> day of June, 2015 addressed as follows:

Salley W. Elliott  
Senior Assistant Deputy Attorney General  
Office of the Attorney General  
P o Box 11549  
Columbia, SC 29211

  
Tara Dawn Shurling  
Attorney and Counselor at Law  
S. C. Bar No. 5099

SWORN TO BEFORE me this 23<sup>rd</sup> day  
of June, 2015.

  
(S.)

Notary Public for South Carolina

My Commission Expires: 2/28/24

**ATTACHMENT A**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**RECEIVED**

SEP 4 0 2014

**SC Court of Appeals**

APPEAL FROM LAURENS COUNTY  
Court of General Sessions  
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge  
Lower Court Case Nos. 2011-GS-30-1625, 1626, 1627

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Appellate Case No. 2014-000161

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STATE OF SOUTH CAROLINA,

RESPONDENT.

v.

KATHY LEONARD REVAN,

APPELLANT.

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**MOTION  
FOR REMAND FOR TRANSCRIPT OF AUDIO EXHIBITS  
PUBLISHED DURING APPELLANT'S TRIAL**

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The Initial Brief of Appellant is due today having been previously extended four times. This appeal involves a Murder case where the Appellant was convicted of one count of Voluntary Manslaughter and one count of Attempted Murder, in addition to one count of Possession of a Weapon during the Commission of a Violent Crime. She received an aggregate sentence of twenty-five (25) years.

During her immunity hearing pursuant to S.C. Code Ann. § 16-11-440 (2006), a lengthy statement given by Appellant following the incident which lead to her charges was played for the Court. It is clear that part 1 of the interview, which was video and audio recorded, was played for the Court during the immunity hearing. Trial Record, p. 34, ll. 12-20; See pages 34-37 attached. While it would seem only logical that parts 1 and 2 of this statement would have been played for the Court during this hearing, the record does not document that fact. The Court Reporter did not note part 2 being played for the Court and she did not transcribe whatever portion was played for the Court; neither is *either* portion noted as having been marked as an exhibit during this hearing. The two DVD's in question were pre-marked as State's Exhibits for ID only at the Trial Record p. 255, ll. 205; attached. They were numbered as State's Exhibit No. 9 and 10. These exhibits were introduced into evidence at Trial Record, p. 478, ll. 14-19, without objection. The trial record indicates that they were played for the jury, but once again, they are not transcribed for the record of this trial. See, Trial Record pgs 478-486; attached. The 911 call was mentioned during the immunity hearing, but it is not clear whether it was ever

played for the Court. The tape of that call was marked as an exhibit for ID purposes at the same time as State's Exhibits No. 9 and 10. It was marked at State's Exhibit No. 11 for ID. Once again, this exhibit was played for the jury, but not transcribed by the Court Reporter for this trial record. See, Trial Record, pgs. 387-391; attached for the Court's convenient reference.

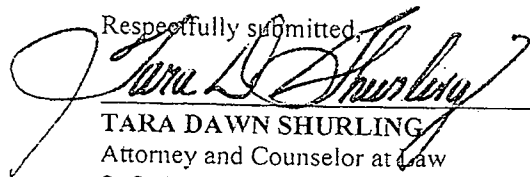
Appellant submits that the content of these three exhibits, State's No. 9, 10 and 11, was very important to her case and that a transcription of these portions of the record below is necessary not only to the preparation of her briefs in this matter, but to the full and fair review of this matter by this Honorable Court. For that reason, Appellant asks that this appeal be stayed and this case be remanded to the Court Reporter to transcript these crucial exhibits as part of the trial record in this case. To avoid unnecessary reproduction of the transcript which has already been printed by the parties, Appellant would suggest the transcript of these recordings be added to the end of the record already produced with reference to pages where they were originally published and introduced, but not transcribed.

With regard to the immunity hearing, Appellant seeks a correction to the record to clarify whether or not, the trial judge heard both State's Exhibit No. 9 and 10 during that proceeding.

Appellant is aware that it has now been in excess of ninety (90) days since this record was delivered to counsel for Appellant. She would note, however, that even if the Court Reporter has destroyed her own notes and back-up tapes, the original recordings are available as they were introduced as State's Exhibits No. 9, 10, and 11 at trial and would therefore be in the custody of the Laurens County Clerk of Court.

Counsel for Appellant assures this Honorable Court that this request is not made for purposes of delay. While Counsel regrets not discovering this problem sooner, she notes that this complex case involves a trial record that is nearly 900 pages long. Counsel has discussed this problem with opposing counsel, Salley w. Elliott, and she has indicated that she would have no objection to this request.

Respectfully submitted,

  
TARA DAWN SHURLING  
Attorney and Counselor at Law  
S. C. Bar No. 5099

ATTORNEY FOR APPELLANT.

The South Carolina Court of Appeals

The State, Respondent,

v.

Kathy Revan, Appellant.

Appellate Case No. 2014-000161

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ORDER

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Appellant has filed a motion requesting that this "case be remanded to the Court Reporter" for transcription of State's Exhibits 9, 10, and 11, and to determine whether the trial judge heard Exhibits 9 and 10 during the immunity hearing. Respondent consents to the request.

Appellant's motion is granted. We grant Appellant a sixty day extension to consult with the court reporter regarding the transcription of the exhibits and to clarify whether the transcript of the immunity hearing should be corrected.

 C.J.  
FOR THE COURT

Columbia, South Carolina

cc:  
Salley W. Elliott, Esquire  
Alan McCrory Wilson, Esquire  
Tara Dawn Shurling, Esquire

**FILED**  
November 20, 2014

TARA DAWN SHURLING, PA

Attorney and Counselor at Law

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Suite A

Columbia, South Carolina 29204

(803) 738-8622

(Fax) (803) 738-1600

E-Mail: [tdslaw@shurlinglaw.com](mailto:tdslaw@shurlinglaw.com)

December 11, 2014

Ms. Stacy Johnson  
Circuit Court Reporter  
125 Firebridge Drive  
Chapin, SC 29036

RE: State of South Carolina v. Kathy Revan  
Case Nos. 2011-GS-30-1625; 1626; 1627

Dear Ms. Johnson:

You previously filled a transcript request in the above referenced matter. The trial transcript I was provided referenced two lengthy audio recordings that were played for the jury during the trial, but the content of those recordings was not transcribed as part of the record. I have been retained to represent Ms. Revn on direct appeal. It is impossible for me to perfect this appeal without those matters being transcribed and made part of the official record. For that reason, I petitioned the Court of Appeals to stay the appeal and allow time for these missing portions of the record to be transcribed. As you can see from the enclosed Motion and Order, the Court of Appeals has granted that request. If you have any problem transcribing these exhibits, please let me know at once. In regards to the immunity hearing, please clarify whether both Parts I and II of Ms. Revan's Statement, subsequently introduced as State's Exhibits 9 and 10, were played for the judge during the immunity hearing. I suspect that they were both played; however, the transcript of that hearing does not make that clear. If in fact both parts I and II were played for the Court during the immunity hearing, please correct the transcript to properly reflect this fact. Rather than have to renumber the entire record, I would suggest you add in a page marked, for example, 34b if adding clarification necessitates another page. As for State's Exhibits 9 and 10 themselves, I would be fine with them being transcribed and added at the end of the record originally provided to me so as to avoid having to renumber the entire record. You can just add to the index where they were addressed in the original transcript and where they are transcribed in the amended record:

For Example:

State's Exhibit 9	
Played for the Court	34
Played for the Jury	478
Transcribed at	_____

This would allow the reader to quickly ascertain where in the proceedings these recordings were published *and* where in the record the transcriptions can be found. I have consulted with opposing counsel, Salley Elliott, and she is in agreement with this proposal. Neither of us wants you to have to renumber this lengthy transcript. State's Exhibit 11 is the audio recording of the 911 call. While that recording is mentioned during the immunity hearing, the record is not clear as to whether the recording was played for the

Ms. Stacy Johnson  
Circuit Court Reporter  
December 11, 2014  
Page 2

judge during the hearing. It was clearly played for the jury during the trial. If State's Exhibit No. 11, the recording of the 911 call, was *played for the Court* during the immunity hearing, the record of the immunity hearing will have to be amended to add that clarification. Once again, I have no problem with you transcribing State's Exhibit 11 at the end of the record to avoid renumbering all the transcript pages. Just be sure the index is amended to reflect every time it was played in court *and* where in the transcript it appears. Be certain to caption each Exhibit where it appears in the transcript.

For Example:

State's Exhibit 11	
Played for Court	_____
Played for Jury	_____
Transcription at	_____

I hope you still have your notes and back-up recordings available to transcribe. If not, please let me know at once so I can get a Court Order to allow you to take temporary custody of these exhibits for the purpose of transcribing them. It may be that they will have to be turned over to Court Administration for you to transcribe them there. I have never had this situation come up before, so I am uncertain how the Court of Appeals would direct us to proceed.

Please feel free to contact me if you have any questions. I will appreciate a reply from you regarding this request so I can advise the Court of the status of this case. Obviously, I will expect to be billed for these additional portions of the record not charged for in your original voucher. For now, I am,

Sincerely yours,

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sm  
Enclosures

cc: Jenny A. Kitchings, Clerk, SC Court of Appeals  
Salley W. Elliott, Senior Assistant Deputy Attorney General  
Desiree Allen, Court Administration  
Kathy Revan, 358569  
Brandon Revan

ATTACHMENT D



STATE OF SOUTH CAROLINA

THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT

STACY S. JOHNSON, RPR  
CIRCUIT COURT REPORTER  
[SJOHNSON@SCCOURTS.ORG](mailto:SJOHNSON@SCCOURTS.ORG)

125 FIREBRIDGE DRIVE  
CHAPIN, SC 29036  
803-622-6989

January 2, 2015

Tara Dawn Shurling, Esquire  
Tarra Dawn Shurling, P.A.  
3614 Landmark Drive  
Suite A  
Columbia, SC 29204

RE: State vs. Kathy Revan; 2011-GS-30-1625; 1626; 1627

Dear Ms. Shurling,

I am in receipt of your correspondence dated December 11, 2014, regarding the above-referenced matter, and I apologize for the delay in responding.

After reviewing my trial notes, I have found that both parts of Ms. Revan's recorded statement were played for the Court during the immunity hearing. As per Rule 607(i) SCACR, I am enclosing a corrected Page 34, indicating said change.

As per a review of my notes, the 9-1-1 call, State's Exhibit 11, indeed, was not played for the Court during the immunity hearing. It was played, however, during the testimony of the 9-1-1 operator as noted in the transcript.

In regard to your request to transcribe the recorded statements, marked State's Exhibits 9 and 10, and State's Exhibit Number 11, the 9-1-1 call, as the transcript indicates, those portions of the proceedings were not taken down stenographically by me. They were just played in court.

Tara Dawn Shurling, Esquire  
January 2, 2015  
Page 2

Unfortunately, I am not able to certify proceedings not taken down by me. Please contact a transcription service to perform that task.

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

Sincerely,



Stacy S. Johnson, RPR  
Circuit Court Reporter

cc: Court Administration  
Salley W. Elliott, Senior Assistant Deputy Attorney General

- 1.5.15 Recd letter from Stacey Johnson Circuit Court Reporter stating that she found that both parts of client's recorded statement were played for the Court during the immunity hearing. She enclosed a copy of a corrected page 34 indicating said change. The 911 call state's exhibit 11 was not played for the court during the immunity hearing. It was played during the testimony of the 911 operator as noted in the transcript. In regard to TDS request to transcript the recorded statements marked States Exhibits 9 and 10 and State's exhibit Number 11, the 911 call, as the transcript indicates those portions of the proceedings were not taken down stenographically by me. They were just played in court. Stacey is not able to certify proceedings not taken down by me. She writes for TDS to contact a transcription service to perform that task. Original to scanning and copy to TDS. SG
- 1.20.15 Letter to Jenny Kitchings regarding the back-up tapes in this matter and with the attached letter from the court reporter. TDS will notify the court by the end of this week as to whether she will be able to work out this with the court reporter if not then she will make arrangements with a transcription service to have these records transcribed privately. Copy to Salley Elliott, client and client contact. SG
- 1.26.15 TDS called and left message requesting something in writing, by either email or U.S. Mail confirming that sh has checked and confirmed sh has no backup tapes from this trial. In tcw her last week she told me she didn't think she did and actually said she doesn't always even use a back-up system!
- 1.27.15 Email from Stacy Johnson: I just wanted to let you know I received your voicemail and I will put something together for you as soon as I can regarding the backup tapes and send you an email. SG
- 1.28.15 Recd email from Stacy Johnson Court Reporter with a letter from her attached to TDS that she is informing TDS in writing 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 and those records were no longer available after May 30, 2014. 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 they are unable to certify those proceedings. Copy of letter to TDS. SG



STATE OF SOUTH CAROLINA

THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT

STACY S. JOHNSON, RPR  
CIRCUIT COURT REPORTER  
[SJOHNSON@SCCOURTS.ORG](mailto:SJOHNSON@SCCOURTS.ORG)

125 FIREBRIDGE DRIVE  
CHAPIN, SC 29036  
803-622-6989

January 28, 2015

Tara Dawn Shurling, Esquire  
Tara Dawn Shurling, P.A.  
3614 Landmark Drive  
Suite A  
Columbia, SC 29204

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,

Stacy S. Johnson, RPR  
Circuit Court Reporter

cc: Court Administration

A small, handwritten mark or signature at the bottom center of the page.

**TARA DAWN SHURLING, PA**

Attorney and Counselor at Law

3614 Landmark Drive

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Columbia, South Carolina 29204

(803) 738-8622

(Fax) (803) 738-1600

E-Mail: [tdslaw@shurlinglaw.com](mailto:tdslaw@shurlinglaw.com)

February 10, 2015

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

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

The Honorable Jenny A. Kitchings

February 10, 2015

Page 2 of 2

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)