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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

AUG 04 2015

SC Court of Appeals

J.C. Nicholson, Jr., Active/Retired Circuit Court Judge

Case No. 2012-CP-10-8135

MOTION

Karen Oliver,

Appellant,

v.

Amanda Lawrence and Trident United Way,

Respondents.

MOTION

When the justices review **Exhibit E** that was authored by an arbitrator which clearly shows **no** use of the terms Defamation of Character, Breach of Contract, 3rd Party Beneficiary or Breaches of Contracts nowhere throughout the documentation presented by the Respondents' then Defendants' atty. to the court. The arbitrator could not possibly have adjudicated something he would not put in writing for his so-called decision. Since preclusion is not justifiably applicable do to that resounding fact and the occurrences of the aforementioned causes of actions occurred during and after the arbitration process further **not** meeting the criteria for Res Judicata or claim preclusion. With that being understood, the transcript should serve the same purpose. It should

depict what took place in the courtroom verbatim according to the guidelines set up to govern the integrity of Due Process and the preservation of constitutional rights. In the spirit of the law, the Appellant request that a review of the challenges made to the transcript and the court reporter's responses be reviewed along with the transcript. The court reporter in her responses **never** denied that the events on challenge occurred she just refused to incorporate them into the transcript. She **never labelled** the challenged events as inconsequential. The Respondents' atty. did. Now is that a fair and equitable authority to make such a distinction when the court reporter herself did not label them inconsequential? The court reporter jeopardizes the integrity of the appeal process by these "intentional omissions" that makes a big difference in how one interprets the transcript's contextual affect.

On pages 19 – 21 of the *S.C. Court Reporter's Manual* Section XIV **TRANSCRIPTS**

A. **Requests for Production of Transcript** There is no permission given to court reporter's to omit statements made by the judge or opposing attorney. It does not provide any provisions for Mona Manley's actions.

Page 24 Section XV **PRODUCTION OF THE TRANSCRIPT** Clearly states: *in the appeal process, the transcript is the official document which provides the appellate court reliable information regarding trial court proceedings.*

Mona Manley by omitting the statements of the judge and opposing counsel has taken everyone's right to reliable information regarding trial court proceedings. Therefore, violating the S.C. Court Administration's guidelines for court reporters while usurping the power of the courts to preserve the 5th and 14 Amendments Constitutional Rights.

Page Three of Transcript:

1. Christy Fargnoli: informed Judge Nicholson that the issues to be discuss would not take long. THIS DONE FROM THE PUBLIC GALLERY (viewing area) OF THE COURTROOM WITH THE LEGAL TEAM FOR THE OTHER CASE ON THE DOCKET ALREADY SET UP TO GO IN THE COURTROOM'S WELL
2. Judge Nicholson: Asking the legal teams who were already set up in the courtroom's well if they would allow us to go ahead of them.
3. The response from both legal teams of Case:
4. Judge Nicholson allowing us to come forward from the public gallery (viewing area) to allow the hearing to take place. Otherwise, the entire hearing by the court reporter's version took place in the public gallery (viewing area).

Page Eleven Line 25 of Transcript:

Christy Fargnoli: argued for Rule 59g and did not easily give in as stated, she argued further to have a ruling against the then Plaintiff now Appellant. HE EVEN ALLOWED HER TO PROVIDE THE COURT WITH A WRONG INTERPRETATION WITHOUT CORRECTION. HE ALREADY VACATED THE ORDER WHY INTERROGATE THE PLAINTIFF?

Page Eight of Transcript:

The Court Reporter omitted Judge Nicholson's refusal to receive the copies of the Filed Exhibits and the refusal to allow the distribution of them to the Respondents' attorney. OTHERWISE, IT APPEARS THE JUDGE JUST IGNORED THE PLAINTIFF

Page 15 Line 5 of Transcript:

The Court Reporter omitted Judge Nicholson's refusal to allow me to speak and the words used to abruptly ending the hearing.

After the article dated, December 22, 2014 appeared in the Post and Courier, *Convicted murderer granted new trial due to inadequate trial transcript*, revealing a serious inefficiency in the competent and reliable application of the steps to provide a transcript that is fair to both parties without bias by the transcriber. I cry, "Foul." A pattern that shows a possibility of the violation of Civil Rights, Right to Due Process and collusion. Painstakingly, it appears to be the same judge in one of the cases, same area of issues- transcripts and court reporters. Greg Voigt, who prosecuted the case that is now back to square one for a convicted murderer is quoted as saying, "The cost of that court reporter's **negligence** really affects the whole system. **It should never happen. That should be the most reliable part of the system.**"

The Appellant has tried without success to invoke the Freedom of Information Act to secure a copy of the recording, tried an injunction to halt it from being destroyed. What is the big deal about receiving the truth? She never denied the challenged events took place. I am trying to preserve the integrity of Due Process for both sides along with doing what I know GOD would desire for I to obtain equity in this matter. The Justices should allow this request as it will have no negative bearing upon the case only enlightenment on what took place in court on Oct.9, 2013.



Karen Oliver
1945 Ghana Street
Johns Island, SC 29455
(843) 485-8065
Pro Se

Other Counsel of Record:
Christy R. Fagnoli
Clawson and Staubes, LLC
126 Sevens Farm Drive Suite 200
Charleston, SC 29492-8144

Attorney for Respondents
(843)577-2026

Andrew Lindemann
Davidson & Lindemann, P.A.
P.O. Box 8568
Columbia, SC 29202
(803) 806-8222
Attorneys for Respondents

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MEMORANDUM WITH CITATIONS OF SUPPORT

The Appellant, Karen Oliver, seeks to obtain a review of the challenges and the court reporter's responses along with the transcript. The current transcript is contrary to the purported purpose of the transcript as presented in the court reporter's handbook. The transcript must be verbatim page 25 of the court reporter's manual. The intentional omission of the statements compromises the integrity of the transcript. Parenthetical use to ensure clear understanding of the record to show that an event has transpired (i.e., when the judge asked the legal teams that were already in the courtroom's well and asked if they would allow us to go ahead of them and the switch took place) according to the court reporter's handbook page 29.

¹ Court Reporter's Manual State of South Carolina pages 19-21, 24, 29

² December 22, 2014, Post and Courier, *Convicted murderer granted new trial due to inadequate trial transcript*



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Johns Island, SC 29455
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cc: Christy Fagnoli
Clawson and Staubes, LLC
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Charleston, SC 29492
(843) 577-2026

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Davidson & Lindemann, P.A.
P.O. Box 8568
Columbia, SC 29202
(803) 806-8222
Attorneys for Respondents

Karen Oliver
1945 Ghana Street
Johns Island, SC 29455
(843) 485-8065
Pro Se

October 16, 2014

Mona Manley
P.O. Box 4516
Beaufort, SC 29906

RE: Case No. 2012-CP-10-8135

Subject: Second Request via Freedom of Information Act and Challenges to Transcript

Dear Mona Manley;

I am submitting a second request for a copy of the audio and video recording and now to include any stenographer's notes of the proceeding referenced above. In accordance with the Freedom of Information Act I have a right to receive a copy of the audio and video recordings along with any stenographer's notes. To avoid the appearance that any form of collusion has taken place along with preserving my Rights to Due Process.

Specific Challenges:

Page Three Lines 1-16 took place in the public gallery as the judge spoke from the bench. The legal team for the case that was held on the same date was already seated and had their paperwork and visual aids set up. Your depiction omits some very vital information that has already been recorded in another format (complaint and Motion).

Page Three:

5. Christy Fagnoli: informed Judge Nicholson that the issues to be discuss would not take long. THIS DONE FROM THE PUBLIC GALLERY (viewing area) OF THE COURTROOM WITH THE LEGAL TEAM FOR THE OTHER CASE ON THE DOCKET ALREADY SET UP TO GO IN THE COURTROOM'S WELL
6. Judge Nicholson: Asking the legal teams who were already set up in the courtroom's well if they would allow us to go ahead of them.
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8. Judge Nicholson allowing us to come forward from the public gallery (viewing area) to allow the hearing to take place. Otherwise, the entire hearing by the court reporter's version took place in the public gallery (viewing area).

Page Eleven Line 25:

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Page Eight

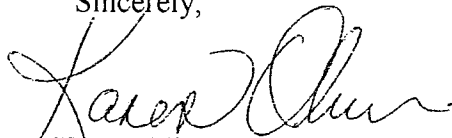
The Court Reporter omitted Judge Nicholson's refusal to receive the copies of the Filed Exhibits and the refusal to allow the distribution of them to the Respondents' attorney.

Page 15 Line 5:

The Court Reporter omitted Judge Nicholson's refusal to allow me to speak and the words used to abruptly ending the hearing.

I look forward to receiving your response to my requests. Again, if there are any cost involved please let me know.

Sincerely,

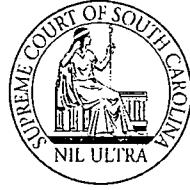


Karen Oliver

CC:

Court Administration
Clerk of Court

Attorney for Respondents: Lindemann and Fagnoli



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

ROSALYN FRIERSON
DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-0269

September 30, 2014

Ms. Karen Oliver
1945 Ghana St.
Johns Island, SC 2455


Dear Ms. Oliver:

Your letter to Rosalyn Frierson dated September 27, 2014, was forwarded to my office for response. In your letter you are requesting a copy of the audio and videotape of the proceedings. To my knowledge, there is no videotape of the proceedings. With regard to audio, there is no provision for providing an audiotape of the court proceedings. The written transcript is the official record. You have requested that Ms. Manley review the submission because the copy you received of the transcript is not accurate. There is a procedure to challenge the accuracy of the transcript.

That procedure is found in the South Carolina Court Reporter Manual. It reads as follows, "When there is a challenge to the accuracy of a transcript, the court reporter will respond to the challenger in writing. The court reporter will then review the records and report the findings in writing to the challenger, with a copy to all parties and Court Administration. Any inaccuracies will be corrected and the pages forwarded to the challenger at no cost. Further review of the record may be permitted by the presiding judge upon written request with good cause shown. If no challenge is received by the court reporter within the 30-day period the tapes may be reused for destroyed".

Please do not delay in submitting your specific challenge in writing to the court reporter, who will report her findings in writing. By copy to Ms. Manley, I am requesting that she follow the procedure outlined above upon receipt of a letter from you outlining the items that you find to be inaccurate. Thank you for your patience.

Sincerely,


Desiree R. Allen
Court Reporter Manager

CC: Rosalyn Frierson, Director, S.C. Court Administration
Jenny Kitchings, Clerk, S.C. Court of Appeals
Mona Manley, Official Court Reporter

October 4, 2014

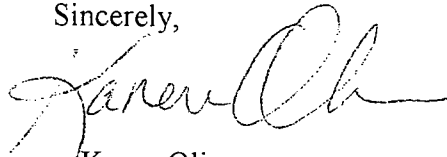
Mona Manley
P.O. Box 4516
Beaufort, SC 29906

RE: Case No. 2012-CP-10-8135
Subject: Freedom of Information Act Request

Dear Mona Manley:

I am submitting this request for a copy of the audio recording of the proceedings referenced above. In accordance with the Freedom of Information Act, I was a participant in the proceedings and would like a copy of the recordings. Please provide me with any cost or material needed that are involved and I will be glad to accommodate it. I look forward to receiving your response. Please have a good day.

Sincerely,



/Karen Oliver
1945 Ghana Street,
Johns Island, SC 29455
(843)485-8065
Pro Se

cc: Christy Fagnoli, Clawson and Staubes, LLC
Andrew Lindemann, Davidson & Lindemann P.A.
S.C. Court Administration
✓ Clerk, Court of Appeals

Mona Manley, Circuit Court Reporter
South Carolina Judicial Department
P.O. Box 4516
Beaufort, SC 29906-4516
(850) 893-6662

Re: Amanda Lawrence and Trident United Way, Respondent
Karen Oliver, Appellant Case No. 2012-CP-10-08135

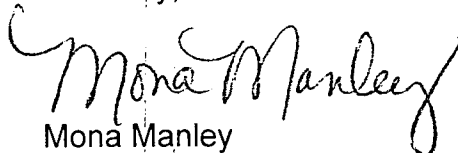
Dear Ms. Oliver,

I have received your letter requesting the audio and/or video of the hearing held on October 9, 2013 before Judge Nicholson. There is no provision for providing either, as the official record is contained in the transcript you have received.

Although you did not question the accuracy of the transcript in your letter I took it upon myself to further review my stenographic notes of the proceeding and have confirmed that it supports the transcript. If further review is requested, you may do so of the presiding judge with good cause shown.

If there are any specific portions of the transcript which you would like me to further review please provide detail of the exact portion, stating page and line number, so that I may address your concerns. I look forward to hearing from you and getting this matter resolved promptly.

Sincerely,



Mona Manley
Circuit Court Reporter

Cc: Desiree R. Allen, Court Reporter Manager

Mona Manley, Circuit Court Reporter
South Carolina Judicial Department
P.O. Box 29906-4516
850-893-6662

October 21, 2014

Re: Amanda Lawrence and Trident Way, Respondent, and Karen Oliver, Appellant
Case No. 2012-CP-10-08135

Dear Ms. Oliver,

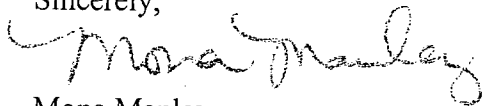
I have received your most recent letter wherein you have requested changes be made to the official transcript. The changes you are requesting would not be part of the transcript, as the official record does not begin until the judge indicates the commencement of a proceeding in a case.

As far as your request to note the parties in the courtroom, there is no provision in law for every person in the courtroom at the time of a proceeding to be noted on the appearance page of the transcript. Unless a proceeding is deemed confidential by the judge, judicial proceedings are open to the public. If any party themselves would like to place that type of information on the record they are more than welcome to, but as that was not done there would be no way to re-create a listing of any and all persons in the courtroom at that exact time.

As far as what you referred to as the judge's abruptness in concluding the hearing, I am sorry to say that there is no way to show any actions you may have perceived from the Judge himself while he was making his conclusory remarks. If you would like to inquire further of the Judge as to what you felt was an abrupt conclusion you may do so by contacting his office directly.

I regret that you continue to have concerns over this proceeding. My office would be more than happy to discuss this further and look forward to having this matter resolved.

Sincerely,



Mona Manley

Cc: Desiree R. Allen, Court Reporter Manager

**Mona Manley, Circuit Court Reporter
South Carolina Judicial Department
P.O. Box 4516
Beaufort, SC 29906-4516
(850) 893-6662**

December 15, 2014

**Re: Amanda Lawrence and Trident United Way, Respondent
Karen Oliver, Appellant Case No. 2012-CP-10-08135**

Dear Ms. Oliver,

I have received your letter dated December 8, 2014. You will find our policy detailed for you in not only the last two letters from myself, but also the letter you received from Court Administration. I am sorry to inform you that I have no new policy and/or explanation for you at this time. It is no longer necessary for you to continue contacting me. I have responded to your request and your challenge.

Any further correspondence from you regarding this matter will be forwarded to Court Administration without a response from me. If any new or additional information about this matter becomes available I will promptly apprise you of that by way of written correspondence. Until then I wish you well in your endeavors and hope you have a just outcome in this matter.

Sincerely,



Mona L. Manley, Court Reporter

cc: (via email)
Court Administration/Desiree Allen
Christy Fagnoli, Esquire
Andrew Lindemann, Esquire
Judge Nicholson

YOUR HEALTH: Is a wellness coach in your future for 2015? D1

The Post and Courier

THE SOUTH'S OLDEST DAILY NEWSPAPER • FOUNDED 1803

Tuesday, December 23, 2014

POSTANDCOURIER.COM

Charleston, S.C. \$1.00

Murderer granted new trial over transcript

Flawed recordings change legal course for man who faced 39 years in '07 shooting

BY CHRISTINA ELMORE
celmore@postandcourier.com

A convicted murderer was granted a new chance at freedom because a Charleston County court reporter could not produce

a transcript of his 5-year-old trial for appellate review.

Travis Maurice Hurst, 29, was transferred from Lieber Correctional Institution Dec. 9 and sent to the Charleston County jail to await a new trial.

He had faced 39 years in prison for gunning down Romi Perez-Ricardez, 24, in August 2007 near Johnson Cemetery on Stall Road.

Hurst confessed to the killing in talks with his friends, prosecutors argued during his first trial in August 2009.

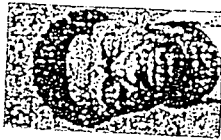
His fingerprints and ammunition similar to what was used to kill Perez-Ricardez were found in an abandoned van that witnesses saw leave the scene, authorities had said.

A court reporter, identified in court

documents as Deborah Everett, was in the courtroom for every minute of the three-day trial, and her job was to record the proceedings.

But when attorneys presenting Hurst's appeal later requested a transcript of the trial, they were told "significant portions of the transcript were unable to be transcribed due to missing or inaudible recordings," court documents stated.

Please see HURST, Page A5



Hurst

Tuesday, December 23, 2014: A5

Murderer granted new trial over inadequate transcript

HURST, from A1

Everett could not be reached for comment.

Backup audio recordings of trials are generally taken as a fail-safe, but the quality of such recordings is never a guarantee, said Assistant Solicitor Greg Voigt, who prosecuted the case. Everett attempted to reproduce a transcript of Hurst's trial using the backup recording, but, ultimately, she was unable to do so, he said.

Attorneys for Hurst filed a motion in March requesting that the missing portions of the record, roughly half of the document, be reconstructed, attorney Robert Dudek said. Circuit Judge J.C. Nicholson oversaw three hearings to revisit evidence, witnesses and the memories of the attorneys who had tried the case, but to no avail, he said.

"Judge Nicholson essentially made an exhaustive effort. He did everything he could to reconstruct the record, but this was a lengthy murder trial," Dudek said. "There were various legal rulings and objections that came up during the trial. At the end of the day, Judge Nicholson ruled the record could not be reconstructed to fairly provide Hurst with meaningful appellate review."

The state Court of Appeals granted Hurst a new trial based on Nicholson's determination. Considering the circumstances, Dudek said, the ruling was agreed upon by all sides.

Dudek and Voigt have both served in their respective careers for more than two decades. They both said they considered a court reporter's inability to produce an adequate transcript an aberration, but not unheard of.

A trial transcript that disappeared in 2012 opened a door for a potential third trial against James Summersett Jr., who had twice been convicted in the shooting death of his childhood friend, Julian Grant, in West Ashley in April 2002.

Summersett's 2003 conviction and life sentence were tossed out by the state Supreme Court due to errors committed by the trial judge. During his second trial, in 2010, a judge found Summersett guilty of voluntary manslaughter.

That charge carried a maximum 30-year sentence, but Summersett again received a life sentence due to a prior conviction.

"The cost of that court reporter's negligence really affects the whole system. It should never happen. That should be the most reliable part of the system."

Assistant Solicitor Greg Voigt

Summersett's second conviction ultimately stuck, but a circuit judge in June agreed to reconsider his life sentence, court records show. The 9th Circuit Solicitor's Office, and the state Attorney General's Office are in the process of appealing that decision.

The decision to grant Hurst a second trial has sent all involved back to square one.

Perez-Ricardez's next of kin was last known to be living in Mexico and has not yet been located or notified of the developments in the case, Voigt said. Witnesses will have to be tracked down and made available for upcoming proceedings. Hurst is still in the process of acquiring a new trial attorney.

Desiree Allen, who manages court reporters for the S.C. Court Administration, confirmed that Everett is no longer employed through the agency. She did not respond to a request for further comment.

In Voigt's eyes, there is no excuse for the slip-up.

"People who have exerted their right to a trial do so knowing it could go against them and they do so with a right to an appeal. You know the transcript is going to be the first order of business. Failure to maintain the record so that you can create a transcript is inexcusable," Voigt said. "The cost of that court reporter's negligence really affects the whole system. It should never happen. That should be the most reliable part of the system."

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Case No. 2012-CP-10-8135

Karen Oliver,

Appellant,

v.

Amanda Lawrence and Trident United Way,

Respondents.

PROOF OF SERVICE

I certify that I served a copy of the Motion on Amanda Lawrence and Trident United Way by depositing a copy of it in the United States Mail, postage prepaid, on July 31, 2015, addressed to their attorney of record, Andrew F. Lindemann of Davidson & Lindemann, P.A. P.O. Box 8568 Columbia, SC 29202.

July 31, 2015



Karen Oliver
1945 Ghana Street
Johns Island, SC 29455
(843) 485-8065
Pro Se

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SC Court of Appeals

July 31, 2015

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

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AUG 04 2015

SC Court of Appeals

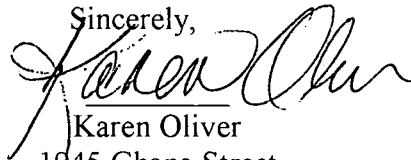
RE: Karen Oliver, Appellant, v. Amanda Lawrence and Trident United Way, Respondents.
Appellate Case No. 2013-002587

Dear Ms. Kitchings:

Enclosed for filing is a Motion. Also enclosed are the following:

- (1) Proof of service of to the known counsel for the respondents.
- (2) The original and other submissions will be mailed in accordance with the rule.
- (3) The \$25.00 fee.

Sincerely,



Karen Oliver
1945 Ghana Street
Johns Island, SC 29455
(843) 485-8065
Pro Se

cc: Christy Fagnoli
Clawson and Staubes, LLC
126 Sevens Farm Drive Suite 200
Charleston, SC 29492
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July 31, 2015



Karen Oliver
1945 Ghana Street
Johns Island, SC 29455
(843) 485-8065
Pro Se

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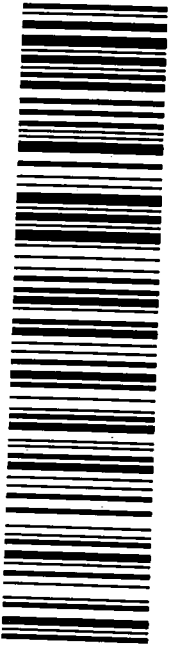
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FROM:

*Karen Oliver
1945 Ghana St.
Johns Island, SC 29455*

TO:

*Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC
29211*

AUG 04 2015

SC Court of Appeals