

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

RECEIVED

MAY 04 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

IVORY BLACKSHIRE,

APPELLANT.

Appellate Case No. 2015-000725

MOTION TO VACATE APPELLANT'S
CONVICTION AND SENTENCE
AND REMAND FOR A NEW TRIAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order vacating Appellant's conviction and sentence and remanding the case for a new trial. In support of this motion, Appellant provides this Court with an Order signed by the Honorable Doyet A. Early, III, indicating the parties agreed the record could not be reconstructed in a manner to permit meaningful appellate review. Judge Early agreed with the parties and

signed an Order to this effect on April 21, 2016, recommending this Court remand the case for a new trial. See Exhibit #1.¹

In April 2014, an Aiken County grand jury indicted Appellant for homicide by child abuse. See Ind. No. 2014-GS-02-553. Appellant was tried before Judge Early, and a jury on March 23-26, 2015. Appellant was represented by Michael Chesser and the state was represented by Ashley Hammack of the Aiken County Solicitor's Office. The jury found Appellant guilty as charged, and Judge Early sentenced him to thirty years' imprisonment. See Sentence Sheet No. 2014-GS-02-553.

On April 16, 2015, Appellant filed a notice of appeal. Upon receipt of appointment to represent Appellant, the Office of Appellate Defense requested the trial transcript on April 29, 2015, from the court reporter, Bethanie K. Creppon. After several follow-up requests, on September 21, 2015, the court reporter indicated she would be "unable to produce this transcript." According to the court reporter, her "car was broken into on June 3rd and all of [her] equipment, including [her] backup external hard drive, was stolen." Thus, the court reporter had "nothing from September 2014 through June 2015."

¹ The hearing occurred on April 5, 2016, in Aiken County. Judge Early directed Appellate Defender Susan Hackett to prepare a proposed order and provide it to Respondent for input. Appellate Defender Hackett prepared the proposed order and provided it to Respondent via email on April 6, 2016. On that same date, Respondent provided corrections and additions. Appellate Defender Hackett incorporated those requests and submitted the proposed order to Judge Early via email on April 6, 2016. On April 8, 2016, Judge Early requested a hard copy of the proposed order and a self-addressed stamped envelope. On that date, Appellate Defender Hackett mailed to Judge Early a hard copy of the proposed order and a self-addressed stamped envelope. Judge Early signed the order and returned it to Appellate Defender Hackett on April 21, 2016. It was received on April 25, 2016. On that date, an original and one copy was sent to the Aiken County Clerk of Court for filing. On May 4, 2016, Appellate Defender Hackett received a clocked copy of the order. The clocked copy of the order, which has been certified by the Clerk of Court, is attached as Exhibit #1 to this motion.

On January 4, 2016, undersigned counsel filed a petition for an order to reconstruct the record of Appellant's trial transcript, or, in the alternative, an order setting aside his convictions and ordering a new trial. On January 14, 2016, Respondent sent a letter to this Court in lieu of a formal response. In the letter, Respondent expressed "no objection" to the request to reconstruct, but opposed the request for a new trial as "premature." On March 8, 2016, this Court granted the motion to remand for reconstruction of the record.

Pursuant to this Court's order, a hearing was held on April 5, 2016, in Aiken County, South Carolina. John William "Bill" Weeks, Esquire, Samuel B. Grimes, Jr., Esquire, and Ashley A. Hammack, Esquire, of the Second Circuit Solicitor's Office were present on behalf of the State of South Carolina. Susan B. Hackett, Esquire, of the Office of Appellate Defense was present on behalf of Mr. Blackshire, the appellant. Appellant was present for the hearing as well.

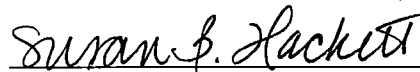
During the hearing, counsel for the State and counsel for Appellant agreed on the record that the trial transcript cannot be reconstructed in a manner to permit meaningful appellate review. For the reasons set forth in the order accompanying this motion, Judge Early agreed with the parties. See Exhibit #1.

When a trial transcript has been lost or destroyed, the Court may vacate the conviction and sentence and remand for a new trial if meaningful appellate review is not possible. See Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007). In light of the court reporter's ability to produce a transcript of Appellant's trial and the parties agreement, along with the trial judge's agreement, that the record

cannot be reconstructed in a way to permit meaningful appellate review, Appellant requests this Court order a new trial in his case.

WHEREFORE, the undersigned counsel requests this Court set aside his conviction and sentence and remand for a new trial.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

Attorney for Appellant

This 4th day of May, 2016.

EXHIBIT

#1

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
)

THE COURT OF GENERAL SESSIONS
INDICTMENT NO. 2014-GS-02-0553
APPELLATE CASE NO. 2015-000725

STATE OF SOUTH CAROLINA)
)
v.)
)
IVORY BLACKSHIRE,)
Defendant)
_____)

ORDER

Pursuant to the Order of the Court of Appeals remanding this case to the Circuit Court to reconstruct the record, a hearing was held on April 5, 2016, in Aiken County, South Carolina. John William "Bill" Weeks, Esquire, Samuel B. Grimes, Jr., Esquire, and Ashley A. Hammack, Esquire, of the Second Circuit Solicitor's Office were present on behalf of the State of South Carolina. Susan B. Hackett, Esquire, of the Office of Appellate Defense was present on behalf of Mr. Blackshire, the defendant. The defendant was present for the hearing as well.

During the hearing, counsel for the State and counsel for the defendant agreed on the record that the trial transcript cannot be reconstructed in a manner to permit meaningful appellate review. For the reasons set forth below, this Court agrees.

The entirety of Mr. Blackshire's trial transcript is unavailable. On April 10, 2014, Mr. Blackshire was indicted by an Aiken County grand jury for homicide by child abuse pursuant to S.C. Code Ann. § 16-3-85(A)(1). The case was tried over a three-day period – March 23, 24, and 25, 2015. Mr. Blackshire was sentenced on March 26, 2015.

The case involved the death of a two-year old child named Caleb Walker. There was at least one pre-trial hearing concerning the voluntariness of statements allegedly made by Mr. Blackshire.¹ Over the course of the three-day trial, the jury was selected following *voir dire*,

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

¹ Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, advised that Defendant's Pretrial motions," indicating he would (1) challenge the admissibility of statements purportedly made by him to law enforcement, (2) challenge the admissibility of photographs, (3) request redaction of statements, (4) challenge the admissibility of a prior injury of the deceased, and (5) request the compensation of anticipated medical experts.

Liz Godard
C.C.C.P. & G. A., Aiken County, S.C.
Sharon Stigee
Deputy Clerk

MAY 4 2016
APR 25 2016
OFFICE OF DEFENSE
SC OFFICE OF APPELLATE DEFENSE

DAE-4

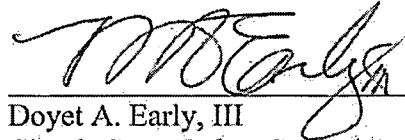
witnesses were called and testified, evidence was admitted, the trial lawyers gave opening statements and closing arguments, motions and objections were made and rulings were issued, and the jury was instructed on the relevant law.² At least three medical professionals testified, including the pathologist, who indicated in the autopsy report the cause of death was “anoxic encephalopathy,” “subdural hemorrhage,” “blunt force injury of head,” and “beating.” One of the medical professionals was a doctor from the Medical College of Georgia who testified regarding evidence uncovered as a result of an examination of Walker’s eyes. This testimony was accompanied by the use of an anatomical model of an eyeball. Without question, the medical testimony was complex. Additionally, the charge – homicide by child abuse – was very serious, and correspondingly, the sentence imposed on Mr. Blackshire of thirty years was substantial.

In light of the inability of the court reporter to produce a transcript in this case, the Court of Appeals remanded this case to this Court in order to conduct a reconstruction hearing. In order for the record to be reconstructed, it must be done in a manner that provides for meaningful appellate review and complies with the constitutional guarantees of procedural due process. See Koon v. State, 358 S.C. 359, 595 S.E.2d 456 (2004); Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Adams v. H.R. Allen, Inc., 397 S.C. 652, 726 S.E.2d 9 (Ct. App. 2012); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 418 S.E.2d 319 (Ct. App. 1992); State v. Ladson, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007). Based on the amount and type of evidence presented, the seriousness of the charge, and the severity of the sentence, the parties agree, and this Court agrees, the record cannot be reconstructed adequately to permit meaningful appellate review.

² According to the Aiken County Clerk of Court’s receipt for exhibits, thirty-two photographs were entered as state’s exhibits. Additionally, several documents and digital media were admitted regarding statements allegedly made as state’s exhibits. Furthermore, two photographs, a CD, and a transcript were made court’s exhibits.

DAE#2

Therefore, this Court concludes the record cannot be reconstructed adequately to permit meaningful appellate review and recommends that the Court of Appeals remand the case for a new trial.



Doyet A. Early, III
Circuit Court Judge, Second Judicial Circuit

April 21, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Doyet A. Early, III, Circuit Court Judge

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SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT,

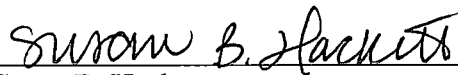
V.

IVORY BLACKSHIRE,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the motion to vacate Appellant's conviction and sentence and remand for a new trial in the above referenced case has been served upon opposing counsel, J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, Samuel B. Grimes, Jr. Esquire, at Second Circuit Solicitor's Office, P.O. Box 3368, Aiken, S.C. 29802-3368, and Ivory Blackshire, #363457, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, on this 4th day of May, 2016.


Susan B. Hackett
Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 4th day of May, 2016.


(L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
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Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

May 4, 2016

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SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

Re: State v. Ivory Blackshire, Appellate Case No. 2015-000725

Dear Ms. Kitchings,

Please find enclosed the original and six copies of appellant's motion to vacate Appellant's conviction and sentence and remand for a new trial in the above-captioned case.

Thank you for your assistance in this matter.

Sincerely,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

SBH/smf

Enclosure

cc: J. Benjamin Aplin, Jr., Esquire (w/ enclosure)
Samuel B. Grimes, Jr., Esquire (w/ enclosure)
Ivory Blackshire (w/ enclosure)