



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

# ORIGINAL

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

May 16, 2017

# RECEIVED

MAY 16 2017

SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: State v. Terrence O'Neil Frazier, Appellate Case No. 2015-002464  
**Update and Request to End Abeyance**

Dear Ms. Kitchings:

I am writing in response to your inquiry letter dated May 11, 2017, instructing me to update the Court regarding the status of the transcript requests in the above-referenced case.

On March 8, 2017, I filed a letter requesting that Mr. Frazier's case be held in abeyance. Simultaneously, I sent requests for two missing transcripts. The first was to Joy Holston, requesting the transcript of a bond hearing held October 15, 2015. The second was to Maryann Nevers, requesting the transcript of a hearing that occurred sometime between September 14 and 16, 2015. Those requests were made pursuant to information received from assistant solicitor Brian Moroney, who prosecuted Mr. Frazier's case. Mr. Frazier was *pro se* at trial and his standby attorneys were not aware of the dates or presiding judges for his pre-trial hearings. *See attached Ex. 1, e-mails to and from solicitor 1/24/17 and 2/8/17.*

On March 9, 2017, Ms. Holston promptly provided the transcript of Mr. Frazier's October 2015 bond hearing.

Regarding the September 2015 transcript, assistant solicitor Moroney's e-mail indicated: "Mr. Frazier appeared in front of Judge Ed Miller the week of September 14, 2015. I don't have the exact date, but the court reporter was MaryAnn Nevers." The September 2015 Eighth Circuit court calendar reflected that Maryann Nevers was Judge Miller's court reporter from September 14-16, 2015; that Diane Marcengill was Judge Miller's court reporter on September 17, 2015; and that there was no court reporter needed for September 18, 2015.

Prior to submitting the abeyance request, our office contacted both Diane Marcengill and Maryann Nevers via e-mail in an effort to confirm which of them was the court reporter for Mr. Frazier's hearing. Ms. Marcengill responded on February 13, 2017 that she had no records of any hearing for Mr. Frazier. *See attached Ex. 2, e-mail to Nevers 2/8/17; Ex. 3, e-mails to and from Marcengill 2/8-13/17.* When Ms. Nevers failed to respond to our preliminary inquiry, our office sent a formal request for the transcript based upon the assistant solicitor's representation on March 8, 2017.

On May 6, 2017, two days prior to the deadline for providing the requested transcript, Ms. Nevers responded to the February 8<sup>th</sup> preliminary inquiry, stating that she would check her records. Later that day, Ms. Nevers apparently realized that she had received our formal request and advised us to disregard her prior e-mail. On May 8, 2016, Ms. Nevers responded that she had reviewed her notes and did not have any record of transcribing proceedings related to Mr. Frazier's case during the relevant time period. *See attached Ex. 4, e-mails from Nevers 5/8/17.*

On May 12, 2017, counsel sent an additional e-mail to Ms. Nevers, asking her to review her records again and provide a letter or status report indicating the result of her review. Ms. Nevers responded later that day, indicating that she reviewed her files again and was unable to find any reference to Mr. Frazier's case. *See attached Ex. 5, memo from Nevers 5/12/17.*

On May 12, 2017, counsel also e-mailed assistant solicitor Brian Moroney, inquiring whether he had any further information regarding the hearing before Judge Miller. Mr. Moroney responded on May 15, 2017, confirming that Mr. Frazier's appearance before Judge Miller occurred during the week of September 14, 2015. *See attached Ex. 6, e-mail from Moroney 5/15/17.*

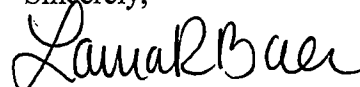
As outlined above, counsel has exhausted every avenue available for obtaining the September 2015 transcript. However, further review of the trial transcript reveals that the missing transcript is not necessary for meaningful appellate review. On page 63 of the trial transcript, assistant solicitor Moroney asked Judge Griffith to give Frazier a "*Faretta* warning." Judge Griffith asked "who did the *Faretta* warning before," to which the solicitor responded: "There is -- he had been admonished and brought before Judge Miller. It was something that probably took five minutes. I don't think it was near in-depth." Thus, the state has conceded the insufficiency of the first *Faretta* warning by Judge Miller, such that the potential issue for direct appeal will be the sufficiency of the second *Faretta* warning by Judge Griffith. **In light of that, counsel requests that this case be taken out of abeyance and that the deadline for filing the Initial Brief of Appellant and Designation of Matter be set for thirty (30) days from today's date, on June 15, 2017.**

Letter to Court of Appeals re: T. Frazier  
May 16, 2017  
Page 3 of 3

By copy of this letter, I am informing Senior Assistant Deputy Attorney General J. Benjamin Aplin, counsel for respondent, of my efforts to obtain the September 2015 transcript and intention to file the initial brief of appellant.

If you require any further information regarding Mr. Frazier's case, please do hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Laura R. Baer". The signature is written in a cursive, flowing style.

Laura R. Baer  
Appellate Defender

Enclosures

cc: J. Benjamin Aplin, Esq.  
Terrence O'Neil Frazier

**From:** Moroney, Brian  
**To:** Laura R. Baer  
**Subject:** RE: State v. Terrence O'Neil Frazier, 2015-GS-1603 to -1606, -1632  
**Date:** Wednesday, February 08, 2017 12:27:26 PM

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Laura,

I apologize for the delayed response. I have recently transferred from the Greenwood office to the thirteenth circuit in Greenville and have been trying to track down my old files. From what I have in my notes, Mr. Frazier appeared in front of Judge Ed Miller the week of September 14, 2015. I don't have the exact date, but the court reporter was MaryAnn Nevers. In addition, Mr. Frazier appeared before Judge Eugene Griffith on October 15, 2015 for a bond hearing. The court reporter was Joy Holston.

I wish I could provide the exact date for the first hearing but hopefully this will point you in the right direction. If I can be of further assistance, just let me know.

Regards,

**Brian J. Moroney**

Assistant Solicitor

13<sup>th</sup> Circuit Solicitor's Office  
Greenville County Courthouse  
305 E. North Street, Suite 325  
Greenville, SC 29601  
(864) 467-8499 (direct)

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**From:** Laura R. Baer [mailto:lbaer@sccid.sc.gov]  
**Sent:** Tuesday, January 24, 2017 10:25 AM  
**To:** Moroney, Brian  
**Subject:** State v. Terrence O'Neil Frazier, 2015-GS-1603 to -1606, -1632

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Dear Mr. Moroney,

I am the appellate defender representing Mr. Terrence Frazier on direct appeal. I am writing to ask if you can provide me with the date and presiding judge of an pre-trial hearings conducted in his case so that I can request the transcripts of those proceedings.

Ordinarily, I would contact defense counsel regarding this, but Mr. Frazier represented himself *pro se* and the public defenders who served as standby counsel told me that they were not involved in his case until the trial began. I have the transcript of the trial held Nov. 16-19, 2015, which references at least one prior hearing before Judge Griffith.

I appreciate any assistance that you can provide.

Sincerely,  
Laura

Laura R. Baer  
**Appellate Defender**  
**South Carolina Commission on Indigent Defense**  
**Appellate Division**  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29201-1589  
(803) 734-1679 – Telephone  
(803) 734-1397 - Fax  
[lbaer@sccid.sc.gov](mailto:lbaer@sccid.sc.gov)

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**From:** Paula Murdoch  
**To:** Laura R. Baer  
**Subject:** FW: The State v. Terrence O 'Neil Frazier  
**Date:** Wednesday, February 08, 2017 3:12:54 PM

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FYI,

Paula Murdoch  
Appellate Defense Division

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**From:** Paula Murdoch  
**Sent:** Wednesday, February 08, 2017 3:12 PM  
**To:** Nevers, Maryann S.  
**Subject:** The State v. Terrence O 'Neil Frazier

Good afternoon, Maryann,  
Did you take the proceedings for a hearing in The State v. Terrence O 'Neil Frazier, in Greenwood County, before Judge Edward Miller on the week of September 14, 2015?  
Please let me know when you have a chance and we can do a request.  
I hope to hear from you soon, thank you.

Paula Murdoch  
Appellate Defense Division

**From:** [Murdoch, Paula](#)  
**To:** [Baer, Laura](#)  
**Subject:** FW: The State v. Terrence O 'Neil Frazier  
**Date:** Tuesday, February 14, 2017 7:41:50 AM

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Diane Marcengill was not the court reporter.  
We are still waiting for Maryann Nevers to respond to our inquiry.  
She was with Judge Miller on Sept 14, 15 and 16.

-----Original Message-----

From: Marcengill, Diane [<mailto:dmarcengill@sccourts.org>]  
Sent: Monday, February 13, 2017 8:27 PM  
To: Murdoch, Paula  
Subject: Re: The State v. Terrence O 'Neil Frazier

?Hi, there.

Sorry it has taken me so long to get back to you. I am in trial.

I did work for Judge Miller on the 17th of September, but that case was not called.

Diane L. Marcengill, RPR, CRR  
Resident Court Reporter  
State of South Carolina  
Tenth Judicial Circuit Court  
P.O. Box 1175  
Walhalla, South Carolina 29691  
(937) 308-6476

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From: Paula Murdoch <[pmurdoch@sccid.sc.gov](mailto:pmurdoch@sccid.sc.gov)>  
Sent: Thursday, February 9, 2017 10:06 AM  
To: Marcengill, Diane  
Subject: The State v. Terrence O 'Neil Frazier

Good afternoon, Diane,  
Did you take the proceedings for a hearing in The State v. Terrence O 'Neil Frazier, in Greenwood County, before Judge Edward Miller on the week of September 14 - 17, 2015?  
Please let me know when you have a chance so I can do a request.  
I hope to hear from you soon, thank you.

Paula Murdoch  
Appellate Defense Division

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**From:** Murdoch, Paula  
**To:** Baer, Laura  
**Subject:** FW: The State v. Terrence O 'Neil Frazier  
**Date:** Monday, May 08, 2017 10:24:49 AM

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Paula Murdoch  
Appellate Defense Division  
Commission on Indigent Defense

-----Original Message-----

From: Nevers, Maryann S. [<mailto:mnevers@sccourts.org>]  
Sent: Monday, May 08, 2017 9:47 AM  
To: Murdoch, Paula  
Subject: Re: The State v. Terrence O 'Neil Frazier

I do have my file with me. I must have dropped it in my bag this morning in case you had any questions. I have looked through my notes again and I have no reference to Mr. Frazier or his case number.

Maryann S. Nevers, CVR-M-CM  
Certified Verbatim Reporter - Master, Certificate of Merit Official Court Reporter Eighth Judicial Circuit -  
At Large Post Office Box 90202 Columbia, SC 29290

[mnevers@sccourts.org](mailto:mnevers@sccourts.org)

---

From: Murdoch, Paula <[pmurdoch@sccid.sc.gov](mailto:pmurdoch@sccid.sc.gov)>  
Sent: Monday, May 8, 2017 9:35 AM  
To: Nevers, Maryann S.  
Subject: RE: The State v. Terrence O 'Neil Frazier

Thank you, Maryann,  
This was not a trial, it was a pre-trial hearing.  
Does this make a difference?

Paula Murdoch  
Appellate Defense Division  
Commission on Indigent Defense

-----Original Message-----

From: Nevers, Maryann S. [<mailto:mnevers@sccourts.org>]  
Sent: Monday, May 08, 2017 9:32 AM  
To: Murdoch, Paula  
Subject: Re: The State v. Terrence O 'Neil Frazier

Ms. Murdoch, Tara has advised that she did have a trial that week, but it was not of Mr. Frazier.

Maryann S. Nevers, CVR-M-CM  
Certified Verbatim Reporter - Master, Certificate of Merit Official Court Reporter Eighth Judicial Circuit -  
At Large Post Office Box 90202 Columbia, SC 29290

[mnevers@sccourts.org](mailto:mnevers@sccourts.org)

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From: Murdoch, Paula <pmurdoch@sccid.sc.gov>  
Sent: Monday, May 8, 2017 7:41 AM  
To: Nevers, Maryann S.  
Subject: RE: The State v. Terrence O 'Neil Frazier

Let me know when you heard from Tara Scott.  
Thank you.

Paula Murdoch  
Appellate Defense Division  
Commission on Indigent Defense

-----Original Message-----

From: Nevers, Maryann S. [<mailto:mnevers@scccourts.org>]  
Sent: Monday, May 08, 2017 6:14 AM  
To: Murdoch, Paula  
Subject: Re: The State v. Terrence O 'Neil Frazier

?Ms. Murdoch, I have reviewed my notes for that week with Judge Miller in Greenwood. Judge Miller was the plea judge that week and not the trial judge. I cannot find Mr. Frazier in my notes, and Judge Miller did not have any trials that week. I would assume that Tara Scott and Judge Addy did Mr. Frazier's trial, and I e-mailed Tara this morning to see if she can check her notes for that week. I apologize for the confusion.

THANKS

Maryann S. Nevers, CVR-M-CM  
Certified Verbatim Reporter - Master, Certificate of Merit Official Court Reporter Eighth Judicial Circuit -  
At Large Post Office Box 90202 Columbia, SC 29290

[mnevers@scccourts.org](mailto:mnevers@scccourts.org)<<https://mail.scccourts.org/owa/redir.aspx?C=0530d46560ca40b3b43f6a3daa27d1bb&URL=mailto%3amnevers%40scccourts.org>>

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From: Paula Murdoch <pmurdoch@sccid.sc.gov>  
Sent: Wednesday, February 8, 2017 3:12 PM  
To: Nevers, Maryann S.  
Subject: The State v. Terrence O 'Neil Frazier

Good afternoon, Maryann,  
Did you take the proceedings for a hearing in The State v. Terrence O 'Neil Frazier, in Greenwood County, before Judge Edward Miller on the week of September 14, 2015?  
Please let me know when you have a chance and we can do a request.  
I hope to hear from you soon, thank you.

Paula Murdoch  
Appellate Defense Division

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State of South Carolina  
The Circuit Court of the Eighth Judicial Circuit

Maryann S. Nevers, CVR-M-CM  
Circuit Court Reporter

Certified Verbatim Reporter - Master - Certificate of Merit

Post Office Box 90202  
Columbia, South Carolina 29290  
mnevers@sccourts.org

May 12, 2017

To: **Laura R. Baer, Esq.**  
**Post Office Box 11589**  
**Columbia, SC 29201**

**Dates Provided: 09/14/15-09/16/15**

**Caption: State v. Terrencer Frazier, 2015-GS-24-1602/1606/1632**

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Ms. Baer:

I had previously received a request from Paula Murdoch for a transcript of a hearing in Greenwood County before Judge Miller in the above-referenced matter. I had advised Ms. Murdoch that I have reviewed my files and have no notation in my records of anything related to Mr. Frazier or his case.

I received your further inquiry today and have also reviewed the message from Brian Moroney, assistant solicitor in Greenwood on the dates provided.

I have again reviewed my files and can find no reference to Mr. Frazier or his case number anywhere in my records for that week.

Should you have any questions in this regard, you may contact me at the above address.

Sincerely,

Maryann S. Nevers, CVR-M-CM  
Circuit Court Reporter

cc: Ms. Paula Murdoch

**From:** Moroney, Brian  
**To:** Baer, Laura  
**Subject:** RE: State v. Terrence O'Neil Frazier, 2015-GS-1603 to -1606, -1632  
**Date:** Monday, May 15, 2017 12:47:30 PM

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Laura,

I left you a voicemail earlier. Everything that I can find from my notes and looking at the judicial circuit calendar shows that Frazier's appearance in front of Judge Miller would have been during the week of September 14<sup>th</sup>, 2015 with Mary Ann Nevers. However, it looks like court reporter Diane Marcengill also worked that week with Judge Miller on the 17<sup>th</sup>, and perhaps she has a record of this appearance. Hopefully we'll be able to track it down, thanks.

Regards,

**Brian J. Moroney**

Assistant Solicitor

13<sup>th</sup> Circuit Solicitor's Office  
Greenville County Courthouse  
305 E. North Street, Suite 325  
Greenville, SC 29601  
(864) 467-8367 (direct)

---

**From:** Baer, Laura [mailto:lbaer@sccid.sc.gov]  
**Sent:** Friday, May 12, 2017 2:48 PM  
**To:** Moroney, Brian  
**Subject:** RE: State v. Terrence O'Neil Frazier, 2015-GS-1603 to -1606, -1632

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Dear Brian,

Court reporter Maryann Nevers recently responded back to our transcript request for the above-referenced case. She indicated that she did not have any record of transcribing proceedings related to Mr. Frazier's case during that week. I have asked her to double-check her records, as I would greatly like to avoid a reconstruction hearing. Meanwhile, I wondered if you could also review your file and see if you had any further notes that could narrow down the hearing date and/or ensure that it was held the week of Sept. 14, 2015.

I need to file a status update letter with the Court of Appeals by the end of next week, **April 19, 2017**. Thus, I would greatly appreciate if you could respond back to me before then.

Thank you in advance for your assistance.

Laura

Laura R. Baer  
**Appellate Defender**  
**South Carolina Commission on Indigent Defense**  
**Appellate Division**  
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Columbia, SC 29201-1589  
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**From:** Moroney, Brian [<mailto:BMoroney@greenvillecounty.org>]  
**Sent:** Wednesday, February 08, 2017 12:27 PM  
**To:** Laura R. Baer  
**Subject:** RE: State v. Terrence O'Neil Frazier, 2015-GS-1603 to -1606, -1632

Laura,

I apologize for the delayed response. I have recently transferred from the Greenwood office to the thirteenth circuit in Greenville and have been trying to track down my old files. From what I have in my notes, Mr. Frazier appeared in front of Judge Ed Miller the week of September 14, 2015. I don't have the exact date, but the court reporter was MaryAnn Nevers. In addition, Mr. Frazier appeared before Judge Eugene Griffith on October 15, 2015 for a bond hearing. The court reporter was Joy Holston.

I wish I could provide the exact date for the first hearing but hopefully this will point you in the right direction. If I can be of further assistance, just let me know.

Regards,

**Brian J. Moroney**  
Assistant Solicitor  
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