

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Jasper County

R. Lawton McIntosh, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

JUN 28 2018

ERIC DARIEN,

S.C. SUPREME COURT  
PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001685  
\_\_\_\_\_

MOTION TO ACCEPT COPY OF AUDIO RECORDING  
IN LIEU OF EXHIBIT  
\_\_\_\_\_

On April 24, 2017, undersigned counsel filed a petition for writ of certiorari and accompanying appendix in this matter. At that time, counsel requested this Court issue a transportation order to transport State's Exhibit #2 (recorded interview of Eric Darien) from the Jasper County Clerk of Court to this Court. The subject of the issue on appeal is the propriety of the admissibility of the recording during Petitioner's trial. On April 25, 2017, this Court issued the transportation order.

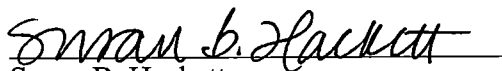
On March 7, 2018, this Court granted the petition for writ of certiorari. Subsequently, undersigned counsel learned the exhibit had never been transported to this Court in accordance with the order. Undersigned counsel contacted the Attorney General's Office regarding the exhibits, and efforts were made to transport the exhibit. Recently, undersigned counsel learned the Clerk of Court is unable to locate the exhibit.

Undersigned counsel contacted the lawyer who represented Petitioner at his post-conviction relief hearing regarding the exhibit. The lawyer had a copy of the exhibit in his file, which he received from trial counsel. Undersigned counsel confirmed with trial counsel that his file had been provided to post-conviction relief counsel. Undersigned counsel also obtained a copy of the exhibit from post-conviction relief counsel, which was provided to the Attorney General's Office.

Undersigned counsel and Christian Saville, Assistant Attorney General, have reached an agreement to use the copy of the audio recording in lieu of the trial exhibit. Copies of emails between the two are attached to this motion as exhibits. Furthermore, the copy of the audio recording is being provided to this Court along with this motion.

WHEREFORE, the undersigned counsel requests this Court use the copy of the audio recording in lieu of the trial exhibit. Additionally, undersigned counsel requests this Court cancel the previously issued transportation order for the exhibit.

Respectfully submitted,

  
Susan B. Hackett  
Appellate Defender  
Attorney for Petitioner

This 28th day of June, 2018.

# EXHIBIT

## Hackett, Susan

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**From:** Christian Saville <CSaville@scag.gov>  
**Sent:** Thursday, June 28, 2018 10:07 AM  
**To:** Hackett, Susan  
**Subject:** RE: Eric Darien

Good morning Susan,

I don't have a problem with that, thank you for sending this to me.

Thanks,  
Christian

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**From:** Hackett, Susan <shackett@sccid.sc.gov>  
**Sent:** Thursday, June 28, 2018 9:58 AM  
**To:** Christian Saville <CSaville@scag.gov>  
**Cc:** Leverett, Scott <sleverett@sccid.sc.gov>  
**Subject:** RE: Eric Darien

Christian,  
Attached to this email is the audio recording that I obtained from PCR counsel who obtained it from trial counsel's file. I propose we use this recording as a substitute for the exhibit. Please let me know your thoughts.

-Susan

Susan Barber Hackett  
Office of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, S.C. 29201  
803-734-1330

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**From:** Hackett, Susan  
**Sent:** Wednesday, June 27, 2018 10:56 AM  
**To:** 'Christian Saville' <CSaville@scag.gov>  
**Cc:** Leverett, Scott <sleverett@sccid.sc.gov>  
**Subject:** Eric Darien

Christian,  
I spoke to Debbie at the Supreme Court this morning about the exhibit in this case. According to Debbie, the information she has received from your office is that the Clerk of Court does not have the exhibit. The clerk who received the exhibit from the Court of Appeals following the direct appeal is deceased. The current clerk does not have the exhibit. I have reached out to PCR counsel, who has a copy of the disc and is getting it to me. Can we agree to substitute the disc from PCR counsel as the exhibit that was introduced at trial?

Thanks,  
Susan

Susan Barber Hackett  
Office of Appellate Defense

1330 Lady Street, Suite 401  
Columbia, S.C. 29201  
803-734-1330

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Jasper County

R. Lawton McIntosh, Circuit Court Judge  
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ERIC DARIEN,

PETITIONER

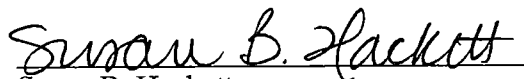
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APPELLATE CASE NO 2016-001685

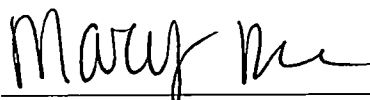
The undersigned attorney hereby certifies that a true copy of the motion for a new trial, or in the alternative, an order to reconstruct the record of appellant's trial in the above referenced case has been served upon opposing counsel, Christan Saville, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Eric Darien, #275549, at Goodman Correctional Institution, 4556 Broad River Road, Columbia, SC 29472, this 28th day of June, 2018.



Susan B. Hackett  
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me  
this 28th day of June, 2018.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: 5-27-27