

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JUSTIN MARTEL WILSON,

RECEIVED

AUG 22 2018

SC Court of Appeals

APPELLANT.

APPELLATE CASE NO. 2017-001461

MOTION FOR AN ORDER TO
RECONSTRUCT THE RECORD OF
THE BENCH CONFERENCES AT APPELLANT'S TRIAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order requiring the parties to reconstruct the bench conferences that occurred during Appellant's trial. During the trial, the judge entertained motions, objections, and arguments during bench conferences. However, these bench conferences were not recorded or transcribed by the court reporter. When the transcript of the proceedings was produced, the court reporter, who is now retired, failed to transcribe the bench conferences. In light of the trial court hearing arguments on motions during the bench conferences and issuing rulings during those

conferences, it is necessary that Appellant have the bench conferences preserved in writing to raise appellate issues presented during those conferences. The legal matters ripe and necessary for appeal exist within those bench conferences.

In accordance with Rule 240(c), SCACR, Counsel submits the following documents to support this motion:

| Exhibit Number | Description |
|-----------------------|---|
| #1 | Indictment – murder (2017-GS-10-4160) |
| #2 | Indictment – attempted murder (2017-GS-10-4161) |
| #3 | Indictment – attempted murder (2017-GS-10-4162) |
| #4 | Indictment – attempted murder (2017-GS-10-4163) |
| #5 | Cover page of Trial Transcript I dated June 19, 2017 – June 23, 2017 ¹ |
| #6 | Index for Trial Transcript I (pages 2-7) |
| #7 | Trial Transcript I page 52 |
| #8 | Trial Transcript I pages 666-668 |
| #9 | Trial Transcript I page 708 |
| #10 | Affidavit of appellate counsel, Susan B. Hackett |

In June 2017, a Charleston County grand jury indicted Appellant for murder and three counts of attempted murder. See Exhibits #1, #2, #3, & #4. The state, represented by E. Culver Kidd, IV and Charles William Patrick, III, called the case to trial on June 19, 2017, before the Honorable Deadra L. Jefferson and a jury. See Exhibit #5. Mark Andrew Peper represented Appellant. Appellant was tried jointly with a co-defendant, Marvin Bryan.² See Exhibit #6. Bentley D. Price represented Wilson. See Exhibit #6.

¹ Although there was only one court reporter for the entirety of the trial, which took place from Monday, June 19, 2017, until Friday, June 14, 2017, the trial in this matter was transcribed in two separate transcripts, which are titled as follows: (1) Monday, June 19, 2017 – Friday, June 23, 2017 (hereinafter Trial Transcript I) and (2) June 23, 2017, the morning of June 24, 2017 (hereinafter Trial Transcript II).

² Upon information and belief, Appellate Defender Taylor D. Gilliam represents Marvin Bryan on appeal and is contemporaneously filing a similar motion.

Prior to the start of trial, the judge discussed some procedural matters with the matters. One of those matters concerned the judge's preferences regarding objections. To this point, the judge explained:

Is there anything else other than the fact that I don't take speaking objections? So if you have an objection, you should be able to tell me succinctly what the objection is, whether it's leading, pitting, relevance, you know the plethora of objections, foundation. And if I need argument, I'll have it at the bench. **I always have my bench conferences recorded.** And if I need to excuse the jury, I will hear additional argument, but I will rule contemporaneously.

See Exhibit #7 (emphasis added). The jury found Appellant guilty as charged. See Exhibit #8. Judge Jefferson sentenced Appellant to fifty years' imprisonment for murder and thirty years for each count of attempted murder, concurrent with one another. See Exhibit #9. On or about June 29, 2017, trial counsel filed and served the notice of appeal.

On July 28, 2017, the Office of Appellate Defense ordered the trial transcript from Heather Landry, Circuit Court Reporter. On February 20, 2018, the transcript was received. On February 22, 2018, undersigned counsel was assigned to represent Appellant. Upon review of the transcript, undersigned counsel realized the bench conferences had not been transcribed and that assurances had been given by the trial judge that the bench conferences were being recorded and would be preserved as part of the record. A closer review of the transcript reveals at least thirty-three (33) bench conferences that were not recorded. See Exhibit #10.

Undersigned counsel contacted trial counsel regarding this matter. Trial counsel confirmed the bench conferences were very important to Appellant's case and were necessary in order for Appellant to received meaningful appellate review. See Exhibit #10. Further, undersigned counsel's review of the transcript supported trial counsel's assessment of the importance of the bench conferences to the appeal. See Exhibit #10.

Error preservation

“The general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal.” State v. Porter, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct. App. 2010) (citing State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-694 (2003)). “A contemporaneous objection is required to preserve issues for direct appellate review.” Id. at 38, 698 S.E.2d at 242 (citing State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005)). “Issues not raised and ruled upon in the trial court will not be considered on appeal.” Id. at 38, 698 S.E.2d at 243 (citing Humbert v. State, 345 S.C. 332, 338, 548 S.E.2d 862, 866 (2001)).

An objection made during an off-the-record conference, such as a bench conference, which is not made part of the record, does not preserve the question for review. York v. Conway Ford, Inc., 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997). Further, an objection must be on a specific ground. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997). To preserve an objection for appellate review, it must be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge. State v. New, 338 S.C. 313, 318, 526 S.E.2d 237, 239 (Ct. App. 1999).

Reconstruction of the record

The trial court has the authority to set the record for appeal. State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). “[T]he inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal.” Id. (internal citations omitted). “Where a trial transcript has been lost or destroyed, a court may remand to have the record reconstructed.” Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); see also Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (holding

that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274; Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992).

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. Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274; see also 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). The Court of Appeals held “the party challenging a reconstructed record on appeal [must] demonstrate prejudice flowing from an inadequate record.” Ladson, 373 S.C. at 325, 644 S.E.2d at 273. “A new trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting meaningful appellate review.” Id. at 325, 644 S.E.2d at 274 (internal quotations omitted).

In China, 251 S.C. at 332, 162 S.E.2d at 277, “portions of the stenographic notes of the trial proceedings were lost before they were transcribed by the court reporter.” The appeal concerned the form of a withdrawal for punitive damages, specifically, whether the withdrawal included a withdrawal as to the issue of recklessness on the part of the defendant. Id. The missing portions of the transcript were relevant to this issue. Id. The case was remanded to the trial judge “to settle the case for appeal.” Id. at 333, 251 S.E.2d at 277-278.

After Ladson was convicted of first-degree burglary at the conclusion of a three-day trial, he learned the court reporter could not produce the transcript. Ladson, 373 S.C. at 321, 644 S.E.2d at 271. Ladson moved for a new trial. Id. The state moved for reconstruction. This

Court remanded the case for reconstruction. Id. Ladson's reconstruction hearing occurred more than a year after the trial. Id. This Court explained "the passage of time clearly dimmed the recall of the participants." Id. at 325, 644 S.E.2d at 274. Reviewing the transcript of the reconstruction hearing, this Court noted "[i]t was clear from the outset of this hearing that reconstructing the record from scratch, after such a substantial delay, would be an uphill struggle." Id. at 321-322, 644 S.E.2d at 271-272. This Court concluded meaningful appellate review was not possible where the testimony of the majority of the witnesses was in summary fashion, the information provided was conclusory, the parties had forgotten about one witness altogether, and there was a dispute whether the defendant testified. Id. at 322, 644 S.E.2d at 272.

After the reconstruction hearing, the Court was "left with a bare bones summary of the evidence (with more remaining unknown than known) from a lengthy multi-day and fact-intensive trial that resulted in a non-parolable twenty-five year person term." Id. at 327, 644 S.E.2d at 274. The record before the Court contained only "a few gratuitous references to generic motions and objections" without any information concerning "the context of the motions, the specific nature of the motions, and whether the challenged evidence was cumulative to other unchallenged evidence." Id. The Court refused to speculate. Id. In concluding the record was insufficient for meaningful appellate review, this Court also noted the record "would effectively foreclose any collateral challenge through post-conviction relief or otherwise." Id. at 327, 644 S.E.2d at 275. Thus, this Court concluded, Ladson had demonstrated "clear prejudice." Id.

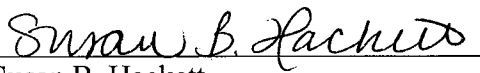
In Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983), the defendant's convictions were set aside and a new trial had where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. Citing Deaton, this Court denied a request for reconstruction in State v. Serrette,

375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007) where the reason for the lack of transcript was due to the defendant's absence for a ten-year period, which this Court explained was "not a situation where the court reporter's equipment malfunctioned at trial leading to a loss of the trial transcript."

The bench conferences from Appellant's trial cannot be produced and are no longer available through no fault of Appellant. Trial counsel relied on the assurances provided by the trial judge that the bench conferences were being recorded and would be part of the appellate record. See Benton v. Davis, 248 S.C. 402, 410, 150 S.E.2d 235, 239 (1966) (providing that for an objection to be preserved for appeal, it must appear in the record even if the parties agree the objection was made and ruled upon during an informal conference and that counsel has a duty to preserve the record accordingly). It was during the bench conferences that the trial judge heard and ruled upon objections and motions. In light of South Carolina's error preservation rules, a transcript of what transpired during those bench conferences is necessary in order for an appellate court to rule upon the issues raised and decided during those bench conferences. Therefore, meaningful review of the record below is not possible with the current transcript. Appellant seeks reconstruction of the record to permit meaningful appellate review of his trial.

WHEREFORE, Appellant requests an order for the reconstruction of the bench conferences that occurred during Appellant's trial in order to perfect his direct appeal in the case. While this petition is pending, Appellant asks this Court to hold the timelines for filing his initial brief and designations in abeyance.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

Attorney for Appellant

This 22nd day of August, 2018.

Exhibit #1

ECK/0311578
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-036633

ARREST WARRANT NUMBER

2015A1010205222

DATE OF ARREST

12/02/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Person of Grand Jury

JUN 13 2017

Date:

VERDICT

Person of Petit Jury

Date:

DOCKET NO. 2017-GS-10-04160

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JUNE TERM 2017

THE STATE

VS.

JUSTIN MARTEL WILSON

B/M DOB: [REDACTED]

Indictment for

MURDER

SC Code: § 16-03-0010

CDR Code: 0116

FILED

6/16/2017 7:58:57 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA

INDICTMENT

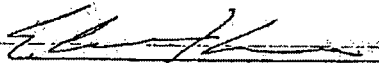
COUNTY OF CHARLESTON

At a Court of General Sessions, convened June 2017, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County, South Carolina on or about November 22, 2015, the defendant, Justin Martel Wilson, while acting alone or in concert with others, feloniously, willfully and with malice aforethought, did kill and murder Franklin Othell Williams by means of gunshot, and Franklin Othell Williams did die in Charleston as a proximate result thereof on or about November 22, 2015; in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



CULVER KIDD
ASSISTANT SOLICITOR

Exhibit #2

ECK/0311578
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-036633

ARREST WARRANT NUMBER
2015A1010205223

DATE OF ARREST
12/02/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury *Date:* JUN 13 2017

VERDICT

Foreperson of Petit Jury *Date:*

DOCKET NO. 2017-GS-10-04161

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JUNE TERM 2017

THE STATE

VS.

JUSTIN MARTEL WILSON

B/M DOB: [REDACTED]

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029
CDR Code: 3410

FILED

6/16/2017 7:58:57 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

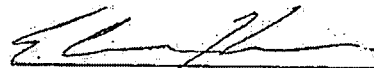
INDICTMENT

At a Court of General Sessions, convened June 2017, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about November 22, 2015, the Defendant, Justin Martel Wilson, while acting alone or in concert with others, did, with intent to kill and malice aforethought, attempt to kill Quran Khalif Allen. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



CULVER KIDD
ASSISTANT SOLICITOR

Exhibit #3

ECK/0311578
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-036633

ARREST WARRANT NUMBER

2015A1010205224

DATE OF ARREST

12/02/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

JUN 13 2017
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-10-04162

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JUNE TERM 2017

THE STATE

VS.

JUSTIN MARTEL WILSON

B/M DOB: [REDACTED]

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR Code: 3410

FILED

6/16/2017 7:58:57 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened June 2017, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about November 22, 2015, the Defendant, Justin Martel Wilson, while acting alone or in concert with others, did, with intent to kill and malice aforethought, attempt to kill Montez Capers. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



CULVER KIDD
ASSISTANT SOLICITOR

Exhibit #4

ECK/0311578
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-036633

ARREST WARRANT NUMBER

2015A1010205225

DATE OF ARREST

12/02/2015

ACTION OF GRAND JURY

TRUE BILL

Frederick Sora JUN 13 2017
Foreperson of Grand Jury Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-10-04163

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JUNE TERM 2017

THE STATE

VS.

JUSTIN MARTEL WILSON

B/M DOB: [REDACTED]

Indictment for

ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR Code: 3410

FILED

6/16/2017 7:58:57 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF CHARLESTON

At a Court of General Sessions, convened June 2017, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about November 22, 2015, the Defendant, Justin Martel Wilson, while acting alone or in concert with others, did, with intent to kill and malice aforethought, attempt to kill Adrian Isaac Williams. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



CULVER KIDD
ASSISTANT SOLICITOR

Exhibit #5

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF CHARLESTON) CASE NO.: 2017-GS-10-4160, 4161,
) 4162, 4163 (Wilson);
) 2017-GS-10-4161, 4165,
) 4166, 4167 (Bryan)

STATE OF SOUTH CAROLINA)
)
) v.)
)
JUSTIN MARTEL WILSON AND)
MARVIN DONTE BRYAN)
)
)

TRANSCRIPT OF RECORD

ORIGINAL

Monday, June 19 , 2017 - Friday, June 23, 2017

COMMENCING AT:
Charleston County Courthouse
Charleston, South Carolina
Before The Honorable Deadra L. Jefferson, Judge

APPEARANCES:

For the State of South Carolina:
Assistant Solicitor E. Culver Kidd, IV, Esquire
Assistant Solicitor Charles William Patrick, III
Ninth Circuit Solicitor's Office
O.T. Wallace Building
101 Meeting Street
Charleston, South Carolina 29401

For the Defendant Justin Martel Wilson:
Mark Andrew Peper, Esquire
The Peper Law Firm, PA
548 Savannah Highway
Charleston, South Carolina 29407

For the Defendant Marvin Donte Bryan:
Bentley D. Price, Esquire
Bentley Price Law Firm
78 Ashley Point Drive, Suite 103
Charleston, South Carolina 29407-6401

Heather R. Landry, CVR
Official Court Reporter

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DEFENSE EXHIBITS

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| | (None entered for either defendant.) | |

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Exhibit #7

1 to go through all the foundation for each of those exhibits
2 when you've agreed on them. Okay? Can y'all work on that,
3 or have y'all worked on that in advance?

4 AST. SOL. PATRICK: Yes, Your Honor.

5 THE COURT: Okay. All right. Is there anything else
6 other than the fact that I don't take speaking objections?
7 So if you have an objection, you should be able to tell me
8 succinctly what that objection is, whether it's leading,
9 pitting, relevance, you know the plethora of objections,
10 foundation. And if I need argument, I'll have it at the
11 bench. I always have my bench conferences recorded. And if
12 I need to excuse the jury, I will hear additional argument,
13 but I will rule contemporaneously. All right. Yes, sir?

14 MR. PEPER: Thank you, Judge. May it please the Court?
15 You asked us earlier last week for Mr. Price and I maybe get
16 together and offer you some guidance as to the order. We've
17 done so if you want to take note of that.

18 THE COURT: Perfect. Yes. I assumed by the way y'all
19 were sitting ---

20 MR. PEPER: Right.

21 THE COURT: --- that Mr. Price was going to go first
22 and you were going to go second.

23 MR. PEPER: That's correct.

24 THE COURT: If y'all switch up, it doesn't matter.
25 I'll just say counsel proceed. And whichever one of y'all

Exhibit #8

1 2017-GS-10-4165, we the jury find, unanimously find, the
2 defendant guilty of attempted murder as to Adrian Isaac
3 Williams, signed by the foreperson of the jury on 23 June of
4 2017. Ladies and gentlemen of the jury, if this is your
5 verdict, please raise your right hand.

6 (Jurors comply.)

7 Thank you. Let the record reflect that all 12 jurors
8 raised their right hand. As to indictment number
9 2017-GS-10-4166, we the jury unanimously find the defendant
10 guilty of attempted murder as Montez Capers, signed by the
11 foreperson of the jury on 23 June 2017. Ladies and
12 gentlemen of the jury, if this was your verdict, please
13 raise your right hand.

14 (Jurors comply.)

15 Thank you. Please let the record reflect that all 12
16 jurors raised their right hand. As to indictment number
17 2017-GS-10-4167, we the jury unanimously find the defendant
18 guilty of attempted murder as to Quran Kaleith Allen, signed
19 by the foreperson of the jury on June 23, 2017. Ladies and
20 gentlemen of the jury, if this was your verdict, please
21 raise your right hand.

22 (Jurors comply.)

23 Thank you. Please let the record reflect that all 12
24 jurors raised their right hand. The verdict forms in the
25 matter of Justin Martel Wilson as to indictment

1 2017-GS-10-4160, we the jury unanimously find the defendant.
2 guilty of murder, signed by the foreperson of the jury on 23
3 June 2017. Ladies and gentlemen of the jury, if this was
4 your verdict, please raise your right hand.

5 (Jurors comply.)

6 Thank you. Please let the record reflect that all 12
7 jurors raised their right hand. As to indictment number
8 2017-GS-10-4161, we the jury unanimously find the defendant
9 guilty of attempted murder as to Quran Kaleith Allen, signed
10 by the foreperson of the jury on June, 23, 2017. Ladies and
11 gentlemen of the jury, if this was your verdict, please
12 raise your right hand.

13 (Jurors comply.)

14 Thank you. As to indictment number 2017-GS-10-4162, we
15 the jury unanimously find the defendant guilty of attempted
16 murder as to Montez Capers, signed by the foreperson of the
17 jury on June 23, 2017. Ladies and gentlemen of the jury, if
18 this was your verdict, please raise your right hand.

19 (Jurors comply.)

20 Thank you. Please let the record reflect that all 12
21 jurors raised their right hand. As to indictment number
22 2017-GS-10-4163, we the jury unanimously the defendant
23 guilty of attempted murder as to Adrian Isaac Williams,
24 signed by the foreperson on June 23, 2017. Ladies and
25 gentlemen of the jury, if this was your verdict, please

1 raise your right hand.

2 (Jurors comply.)

3 Thank you. Please let the record reflect that all 12
4 jurors raised their right hand.

5 THE COURT: Is there any request to poll the jury from
6 the defendant Bryan?

7 MR. PRICE: No, Your Honor.

8 THE COURT: Any request to poll the jury from the
9 defendant Wilson?

10 MR. PEPPER: Yes, ma'am.

11 THE COURT: Please proceed with the polling the jury.

12 THE CLERK: Yes, Your Honor.

13 THE COURT: We're you going to change your mind Mr. --
14 Mr. Price, you were saying something. Do you want the jury
15 polled or do you not want the jury polled?

16 MR. PRICE: Yes. We'll join in the motion. Yes, Your
17 Honor.

18 THE CLERK: Ladies and gentlemen, what we're going to
19 do now is called polling the jury. When I call your jury
20 number, please raise your hand. I'll identify you, then you
21 can put it down. I'll then ask you two questions. First
22 question will be: Where those your verdicts? The second
23 question will be: Are they still your verdicts? Please
24 answer these questions verbally.

25 As to Defendant Justin Martel Wilson, juror number

Exhibit #9

1 to take care of that, you think?

2 AST. SOL. KIDD: I'll take care of that, Your Honor.

3 THE COURT: Thank you, sir. Mr. Wilson, on indictment
4 2017-GS-10-4160, the offense of murder, you're sentenced to
5 the State Department of Corrections for a period of 50
6 years. The sentence is concurrent with 2017-GS-10-4161,
7 4162, and 4163 respectively, the offenses of attempted
8 murder where your sentence is the State Department of
9 Corrections for 30 years each on those offenses. All these
10 are to run concurrent with one another. You'll get credit
11 pursuant to 24-13-40 to be calculated and applied by the
12 Department of Corrections.

13 Do any of them need drug treatment or any evaluation
14 for drug treatment?

15 MR. PRICE: No, not on behalf of Mr. Bryan.

16 THE COURT: They don't need to go to the ATU; correct?

17 MR. PRICE: No, ma'am.

18 MR. PEPER: No, Judge.

19 THE COURT: Nobody ever told me either how long --
20 they've been in jail since the day after the event?

21 MR. PEPER: Your Honor, Mr. Wilson has been in jail
22 since December 1, 2015.

23 MR. PRICE: 2016.

24 MR. PEPER: '16, excuse me.

25 THE COURT: 2016. And how long has Mr. ---

Exhibit #10

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF APPEALS
) 2017-GS-10-4160; -4162; -4162; -
4163
) APPELLATE CASE NO. 2017-001461

STATE OF SOUTH CAROLINA,
Respondent,

v.

JUSTIN MARTEL WILSON,
Appellant.

AFFIDAVIT OF SUSAN B. HACKETT

RECEIVED


AUG 22 2018

SC Court of Appeals

PERSONALLY appeared before me, Susan B. Hackett, who being duly sworn, deposes and says:

1. I am licensed to practice law in the State of South Carolina. I graduated from the University of South Carolina School of Law in 2003. I became a member of the South Carolina Bar on November 17, 2003. I currently practice law with the Office of Appellate Defense as an Appellate Defender. I have been an Appellate Defender since September 15, 2011.
2. The Office of Appellate Defense represents individuals, who have been convicted of crimes and cannot afford legal counsel, when appealing those convictions and sentences. The Office also represents indigent individuals who require representation concerning the appeal of a post-conviction relief matter.
3. On June 24, 2017, Appellant was convicted of numerous charges. On that date, the Honorable Deadra L. Jefferson, who presided over his trial, sentenced him to fifty years imprisonment for murder and thirty years imprisonment for each count of attempted murder. On June 29, 2017, Appellant, through counsel, filed and served a notice of appeal. In light of Appellant's indigency, the Office of Appellate Defense took over Appellant's appeal.
4. On July 28, 2017, the Office of Appellate Defense ordered the trial transcript from Heather Landry, Circuit Court Reporter. On February 20, 2018, the transcript was received.
5. On February 22, 2018, I was assigned to represent Appellant. Upon review of the transcript, I realized the bench conferences had not been transcribed and that assurances had been given that bench conferences were being recorded and would be preserved as part of the record. The transcript also revealed that the judge informed the parties that she would not allow "speaking objections," and instructed the lawyers to approach the bench with arguments on objections.

6. On August 22, 2018, I contacted trial counsel regarding this matter. Trial counsel confirmed the bench conferences were very important to Appellant's case and were necessary in order for Appellant to received meaningful appellate review.
7. I have reviewed the transcript, and I have found no fewer than thirty-three (36) bench conferences that were not transcribed. Further, it appears the matters discussed during the bench conferences involved significant legal issues with potential for appellate review. It appears the judge heard objections and arguments on the objections during bench conferences. It also appears the judge ruled on the objections during the bench conferences. Therefore, the substance of the bench conferences is necessary for appellate review purposes.


Susan B. Hackett

SWORN TO before me this 22nd
day of August, 2018.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

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AUG 22 2018

SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT,

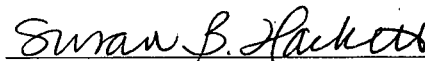
V.

JUSTIN MARTEL WILSON,

APPELLANT.

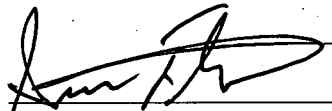
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the motion for an order to reconstruct the record of the bench conferences at appellant's trial in the above referenced case has been served upon opposing counsel, Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Justin Martel Wilson, #372989, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 22nd day of August, 2018.



Susan B. Hackett
Appellate Defender
Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 22nd day of August, 2018.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

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

August 22, 2018

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AUG 22 2018

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. Justin Martel Wilson, Appellate Case No. 2017-001468

Dear Ms. Kitchings,

Please find enclosed the original and six copies of Appellant's motion for an order to reconstruct the record of the bench conferences at Appellant's trial in the above-captioned case.

Thank you for your assistance in this matter.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/

Enclosure

cc: Melody J. Brown, Esquire (w/ enclosure)
Mark Peper, Esquire (w/ enclosure)
Justin Martel Wilson (w/ enclosure)