

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2018-001684

RECEIVED

DEC 20 2018

SC Court of Appeals

The State,..... Respondent,

v.

Michael Cliff Eubanks, Appellant.

**Petition for this Court to Determine what Counsel Should Do Regarding Payment
for the Trial Transcript**

Michael Cliff Eubanks petitions this Court for direction about what to do regarding payment for the trial transcript. This petition is based on the following grounds.

1) From July 31, 2018 to August 3, 2018, the Eighth Circuit Solicitor's Office prosecuted Mr. Eubanks before the Honorable Frank R. Addy, Jr. and a jury for first-degree criminal sexual conduct with a minor, second-degree criminal sexual conduct with a minor, and third-degree criminal sexual conduct with a minor. The jurors convicted Mr. Eubanks as charged. Judge Addy sentenced Mr. Eubanks to twenty-five years imprisonment for first-degree criminal sexual conduct with a minor, a concurrent sentence of fifteen years for third-degree criminal sexual conduct with a minor, and a consecutive sentence of fifteen years for second-degree criminal sexual conduct with a minor, suspended on the service of forty-five days, with probation for five years.

2) Tara Scott was the court reporter.

3) On August 17, 2018, while the new trial motion was still pending, Rauch Wise, who was Mr. Eubanks' trial counsel, requested the court reporter produce the trial transcript.

4) On October 17, 2018, Mr. Wise inquired about the status of the transcript. On October 18, 2018, the court reporter responded and anticipated having the transcript completed by October 29, 2018.

5) On October 26, 2018, the court reporter wrote counsel and stated the transcript would "likely" be complete by Wednesday, October 31, 2018 or Thursday, November 1, 2018. The court reporter further stated, "Because I've gone over my allotted 60 days, I have also filed a request for an extension with Court Administration." By letter October 30, 2018, undersigned counsel updated this Court regarding the status of the transcript. Undersigned counsel never received a copy of the extension approval.

6) On November 28, 2018, the court reporter responded to an inquiry from one of Mr. Eubank's relatives. The court reporter stated:

I resigned from my position as a court reporter at the end of October. Prior to my resignation I was given permission by court administration to continue producing transcripts as the requests come in just like normal. Not knowing the policy of their IT department though, I did not make a backup of all my email contacts for transcript requests. The day after my resignation I immediately lost access to my tscott@sccourts.org email and all of that information was deleted from the system. I also lost access to all of my lists of requests. Unfortunately, I have had to wait until I am contacted, like you did, to be able to then get those transcripts completed and out to the people who ordered them.

7) Undersigned counsel learned the court reporter had accepted a position as a Victims' Advocate with the Eighth Circuit Solicitor's Office. On November 26, 2018, undersigned counsel wrote the court reporter and inquired, "Do you know how this transcript will be handled now as you technically cannot certify it anymore?" Later, on

November 26, 2018, the Court reporter provided a copy of the transcript. The court reporter again stated Court Administration approved her continuing to produce transcripts. Although confirming her certifications are current, the court reporter did not address the conflict created by her preparing this transcript while employed by the office that prosecuted Mr. Eubanks.

8) By letter dated November 27, 2018, undersigned counsel informed this Court:

On November 26, 2018, I received the trial transcript. The court reporter, however, became a Victims' Advocate with the Eighth Circuit Solicitor's Office while this transcript request was still pending, meaning the certification that she does not have an "interest to any party" is not accurate.

9) On November 28, 2018, undersigned counsel requested the Eighth Circuit Solicitor provide information about the court reporter's application for the position and dates of the interview(s), job offer, and acceptance of the job. At the time of preparing this petition, undersigned counsel has not received a response from the Solicitor.

10) On November 29, 2018, undersigned counsel wrote Court Administration requesting a copy of the extension to November 16, 2018, the court reporter's resignation letter, whether the court reporter disclosed the conflict of interest, the approval to continue preparing transcripts, and the policy that allows the court reporter to continue preparing transcripts after beginning new employment.

11) The information requested from the Solicitor and Court Administration is needed to determine the date the court reporter obtained an interest in employment with the Eighth Circuit Solicitor's Office. Once all of this information is obtained, undersigned counsel anticipates petitioning this Court to require an independent review of the transcript

to confirm its accuracy. The ultimate goal is for this Court, Mr. Eubanks, Mr. Eubanks' family, and the general public to have confidence in the transcript.

12) On December 6, 2018, Mr. Eubanks petitioned this Court to hold the briefing deadlines in abeyance until the Eighth Circuit Solicitor's Office and South Carolina Court Administration respond to Freedom of Information Act requests regarding the court reporter from Mr. Eubanks' trial preparing the trial transcript while employed by the Eighth Circuit Solicitor's Office, the same office that prosecuted Mr. Eubanks. The South Carolina Attorney General's Office did not oppose this request.

13) By letter dated December 13, 2018, received on December 17, 2018, a copy of which is attached, Court Administration provided part of the requested information. The response reveals two violations of policy. First, the procedure for requesting extensions to prepare transcripts was not followed. Second, the published policy requiring court reporters to return records to Court Administration upon separation was not followed. This policy provides:

When a court reporter's employment with the Department ends, all primary and back-up recordings, trial notes, and log sheets must be properly labeled, dated, and transmitted in person to Court Administration in Columbia, South Carolina, no later than the last day of employment.

See Section X (Return of Records and Equipment) of the Court Reporter Manual, at p. 13, as approved August 16, 2011, amended March 1, 2017, and updated May 1, 2018 (found at <https://www.sccourts.org/courtreporter/CourtReporterManual.pdf> (last viewed December 18, 2018)). Undersigned counsel's response to Court Administration requesting more information is being submitted to this Court contemporaneously with this petition.

14) The court reporter is requesting payment for the transcript and has submitted an invoice for \$2,577.25. A copy of the invoice is attached. Mr. Eubanks and his family,

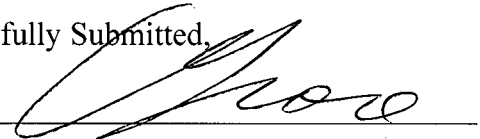
who are paying Mr. Eubanks' legal fees and expenses, understand the obligation to pay for the transcript. As part of the retainer agreement, Mr. Eubanks' family deposited funds to cover the cost of the transcript into undersigned counsel's trust account. Under the current circumstances, Mr. Eubanks and his family have some concerns.

15) As stated above, Mr. Eubanks anticipates petitioning this Court to require an independent review of the transcript to confirm its accuracy. Because this situation is so unusual, Mr. Eubanks does not know if this remedy is even possible. Alternatively, this Court could require the trial tapes be provided to a disinterested court reporter for re-transcription. Both of these potential remedies raise the question of who should pay for the service. Although Mr. Eubanks and his family understand the obligation to pay the cost of producing the trial transcript, they also believe it would not be fair to require them to pay twice for the cost of the transcript.

Therefore, Mr. Eubanks respectfully requests this Court direct undersigned counsel what to do with the funds in his trust account that are earmarked for paying for the cost of preparing the transcript.

Respectfully Submitted,

By



E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Michael Cliff Eubanks

December 18, 2018
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM LAURENS COUNTY
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Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2018-001684

The State,..... Respondent,

v.

Michael Cliff Eubanks, Appellant.

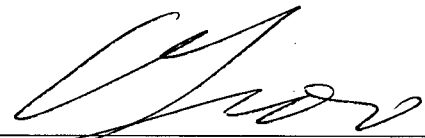
Certificate of Service

I certify that I have served this pleading on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed to:

J. Benjamin Aplin, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

This petition is also being served on the court reporter by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed to:

Ms. Tara T. Scott
1849 Stevenson Road
Abbeville, South Carolina 29620



E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
E-mail: charles@groselawfirm.com

December 18, 2018.



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

TONNYA K. KOHN
DIRECTOR
KARAMA T. BAILEY
DEPUTY DIRECTOR

1220 SENATE STREET, SUITE
200
COLUMBIA, SOUTH CAROLINA
29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-0269

December 13, 2018

E. Charles Grose, Jr.
404 Main Street
Greenwood, SC 29646

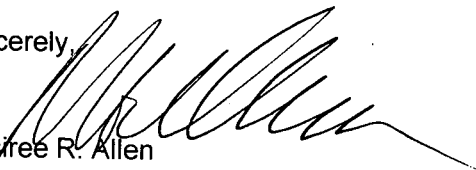
Dear Mr. Grose:

I am writing in response to your letter dated November 29, 2018, requesting Ms. Scott's application for an extension to November 16, 2018, to prepare an extension. The extension she submitted on October 27, 2018 requested an extension to November 17, 2018. It is attached. The extension was not granted at the time it was submitted due to the extension request procedure not being followed. When you called our office about the status of the transcript, Ms. Scott was contacted and assured me that the transcript would be delivered within a few days. Therefore, the requested extension was not granted. The email you have attached to your letter indicates that the transcript was delivered to you on November 26, 2018.

I am not at liberty to share Ms. Scott's resignation letter, as that involves a personnel issue. Ms. Scott was granted permission by me to continue preparing transcripts, since it is always preferred that the court reporter who takes the record prepare the transcript. There is no **written** policy allowing a court reporter to continue preparing transcripts after resigning. However, it has been our practice to ask the court reporter if they would be willing to prepare transcripts as requests for transcripts are received. There is no cost for this information.

I am in receipt of a copy of a letter you sent to the South Carolina Court of Appeals dated December 6, 2018. I am copying the Court on this correspondence so that they will be aware of your inquiry and my response. Of course, I am available to answer any other questions that the Court of Appeals or you may have. Thank you.

Sincerely,


Desiree R. Allen
Program Manager

Enclosure: Extension request submitted by Tara Scott

CC: Jenny Abbott Kitchings, Clerk, S.C. Court of Appeals.
Karama T. Bailey, Deputy Director, S.C. Court Administration

NOTICE OF REQUEST FOR EXTENSION

(State of South Carolina,
 (PLAINTIFF, 2018-GS-30-001294
 TITLE OF CASE (-VS-
 (Michael Cliff Eubanks
 (DEFENDANT.

In accordance with Section 2D of Rule 1 of the Supreme Court Rules of Practice, an extension for completion of the transcript of proceedings in the above-entitled action is requested.

Date Transcript was Ordered: August 17, 2018
Attorneys involved in the appeal: _____

For Appellant: Rauch Wise and Charles Grose
 CASE ON APPEAL YES
 Approved _____
 Not Approved _____

For Respondent: _____

Approximate Number of Pages: 900

Pages completed to date: 400

Estimated completion date: November 17, 2018

Reason for Extension: Transcript not complete

Date Submitted: October 27, 2018

BY: Tara T. Scott

Official Court Reporter

cc: Attorney for Appellant
Attorney for Respondent

The Grose Law Firm, LLC
404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: charles@groselawfirm.com
Web: GroseLawFirm.com

December 18, 2018

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

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Re: *State of South Carolina v. Michael Cliff Eubanks*
Appellate Case No. 2018-001684

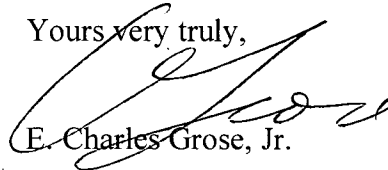
Dear Ms. Kitchings:

Enclosed please find the original and six copies of Mr. Eubanks Petition for this Court to Determine what Counsel Should Do Regarding Payment for the Trial Transcript, along with a certificate of service.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Mr. Cliff Eubanks
J. Benjamin Aplin, Esquire
The Honorable David M. Stumbo
Ms. Tonnya K. Kohn
Ms. Desiree Allen
Ms. Tara Scott
C. Rauch Wise, Esquire

404 Main Street
Greenwood, SC 29646



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The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
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