

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 31 2018
SC Court of Appeals

The State,..... Respondent,

v.

Michael Cliff Eubanks, Appellant.

**Reply to State's Letter in Response to Petition for this Court to Determine what
Counsel Should Do Regarding Payment for the Trial Transcript**

Michael Cliff Eubanks replies to the State's letter submitted in response to his petition for this Court to provide direction about what to do regarding payment for the trial transcript.

1) Although the State purports not to take a position on this matter, its letter dated December 21, 2018 urges this Court to order payment and, by citing *In re Jackson*, 365 S.C. 176, 617 S.E.2d 123 (2005), even threatens disciplinary action. The seriousness of this matter, including the potential involvement of the Office of Disciplinary Counsel, is precisely why undersigned counsel filed the petition with this Court to seek guidance. Undersigned counsel does not take this action lightly. Prior to making that request, counsel sought advice from multiple attorneys.

2) Although acknowledging the court reporter is required to render services "in compliance with the procedures approved by the Office of Court Administration," the

State does not acknowledge that the services rendered in this case *did not* follow those procedures because, in part, the court reporter was required to return her records and tapes to Court Administration no later than her last date of employment. Additionally, the State does not acknowledge that the court reporter's certification is not valid.

3) The State suggests Mr. Eubanks should employ the procedure set forth at pp. 19-20 of the Court Reporter's Manual. This remedy contemplates a court reporter without an interest to either party and, therefore, is not adequate under the unique circumstances of this case. Mr. Eubanks has suggested remedies in his Petition for this Court to Take Possession of the Tapes of Mr. Eubank's Trial and Order Independent Review and Verification of the Trial Transcript

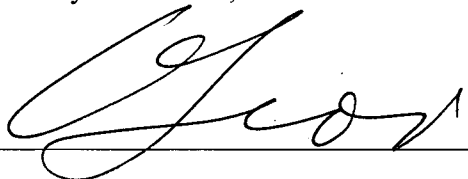
4) Even though the court reporter accepted employment with the Solicitor's Office after Mr. Eubanks' jury trial, it is undisputed that the court reporter certified the transcript while employed by the Eighth Circuit Solicitor's Office, the same office that prosecuted Mr. Eubanks. In fact, the timeline set forth in Mr. Eubanks' Petition for this Court to Take Possession of the Tapes of Mr. Eubank's Trial and Order Independent Review and Verification of the Trial Transcript establishes the court reporter very likely accepted employment with the Eighth Circuit Solicitor's Office *before* she started transcribing the transcript. Had the court reporter disclosed to Mr. Eubanks trial or appellate counsel that she had acquired an interest in employment with the Solicitor, then counsel would have requested a different court reporter prepare the transcript.

5) Undersigned counsel sincerely hopes the transcript is accurate; however, it is not enough for the transcript to be accurate. Our state's procedures contemplate avoiding conflicts of interest and ensuring confidence in the accuracy of transcripts. *See, e.g.* Rule

28(c), SCRCF (expressly providing, "No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action) and Rule 508, SCACR (contemplating Court Administration regulating outside employment by court reporters employed by the Judicial Department).

6) As set forth in more detail in Mr. Eubanks Petition for this Court to Determine what Counsel Should Do Regarding Payment for the Trial Transcript, filed and served on October 18, 2018, while Mr. Eubanks and his family, who are paying Mr. Eubanks' legal fees and expenses; understand the obligation to pay for having the trial transcribed, they believe it would be unfair to require them to pay for this service twice.

Respectfully Submitted,

By 

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Attorney for Michael Cliff Eubanks

December 28, 2018
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
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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.
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December 28, 2018.

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December 28, 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*
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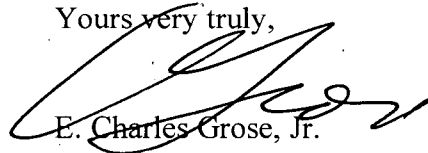
Dear Ms. Kitchings:

Enclosed please find the original and six copies of Mr. Eubanks Reply to State's Letter in Response to 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.

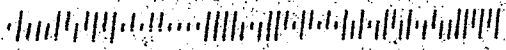
With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

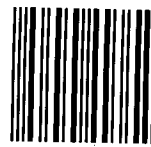
cc: Mr. Cliff Eubanks
J. Benjamin Aplin, Esquire
The Honorable David M. Stumbo
Ms. Tonnya K. Kohn
Ms. Desiree Allen
Ms. Tara Scott
C. Rauch Wise, Esquire



Greenwood, SC 29646



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Clerk of Court, S.C. Court of Appeals
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