

STATE OF SOUTH CAROLINA
In the Court Of Appeals

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

Appellate Case No. 2018-001684

RECEIVED

JAN 07 2019

SC Court of Appeals

THE STATE,

Respondent,

v.

MICHAEL CLIFF EUBANKS,

Appellant.

**RETURN TO PETITION FOR THIS COURT TO TAKE
POSSESSION OF TAPES OF MR. EUBANK'S TRIAL AND
ORDER INDEPENDENT REVIEW AND VERIFICATION
OF TRIAL TRANSCRIPT**

Respondent (the State), by and through undersigned counsel and making Return to Appellant's petition for this Court to take possession of the tapes of Appellant's trial and order independent review and verification of the trial transcript, would respectfully show unto this Court:

1. Appellant Michael Cliff Eubanks was indicted at the July, 2017 term of the grand jury of Laurens County for second-degree criminal sexual conduct (CSC) with a minor (2017-GS-30-1205) and third-degree CSC with a minor (2017-GS-30-1294). He was subsequently indicted at the August, 2017 term for first-degree CSC with a minor (2017-GS-30-1499). Appellant was represented by C. Rauch Wise, Esquire. The State was represented by Deputy Solicitor Dale Scott and Assistant Solicitor Julie Kate Keeney of the Eighth Circuit Solicitor's Office. On July 31-August 3, 2018, Appellant proceeded to a trial by jury

before the Honorable Frank R. Addy, Jr., pursuant to which he was found guilty as indicted. Judge Addy sentenced Appellant to twenty-five (25) years' imprisonment for first-degree CSC with a minor, fifteen (15) years' concurrent imprisonment for third-degree CSC with a minor and fifteen (15) years' consecutive imprisonment suspended upon the service of forty-five days' imprisonment and five (5) years' probation for second-degree CSC with a minor. Appellant timely filed a motion for a new trial and by written order dated September 11, 2018, that motion was denied by the lower court. Appellant timely filed and served notice of appeal and E. Charles Grose, Jr., is now perfecting a direct appeal on his behalf.

2. On December 18, 2018, Appellant filed a "Petition for this Court to Determine what Counsel Should Do Regarding Payment for the Trial Transcript" in this matter, and on December 21, 2018, the State submitted a letter responding to Appellant's inquiry. It does not appear this Court has ruled on or addressed Appellant's Petition yet.

3. On December 24, 2018, Appellant filed the "Petition for this Court to Take Possession of the Tapes of [Appellant's] Trial and Order Independent Review and Verification of the Trial Transcript" which is the subject of this return now filed on behalf of the State. He argues that because former court reporter Tara Scott accepted a position of employment as a victim's advocate for the Eighth Circuit Solicitor's Office on September 21, 2018, more than one month after the conclusion of Appellant's trial [August 3, 2018] and more than one month after trial counsel wrote to Ms. Scott requesting that she produce a transcript of the trial [August 17, 2018], Appellant lacks confidence in the accuracy of the trial transcript Ms. Scott has now produced. Appellant contends Ms. Scott should have withdrawn or otherwise recused herself from preparing the transcript as soon as the Eighth Circuit Solicitor began attempting to fill a vacant victims' advocate position and now asks this Court to take custody of the records of his trial and order an independent review of

the transcript to verify its accuracy. He alternatively asks that this Court order the trial transcript be re-transcribed by a “disinterested court reporter.”

9. As noted in its December 21, 2018, letter responding to Appellant’s previous Petition, to the extent Appellant and his family have concerns about the accuracy of the transcript, there is a well-established process in place for addressing any such concerns. The Appellate Court Rules provide: “The transcript shall be prepared in the manner prescribed by the Court Reporters Manual published by the Office of Court Administration.” Rule 606(c), SCARC. The Court Reporter Manual sets forth the procedure for challenging the accuracy of a transcript including the court reporter’s obligation to review the record, report the findings in writing to the challenger, and correct any inaccuracies at no cost. S.C. Court Reporter Manual 19-20 (Approved August 16, 2011, & Amended March 1, 2017). It goes on to state: “Further review of the record may be permitted by the presiding judge upon written request with good cause shown.” *Id.*


The State submits that rather than presuming the transcript which has already been produced is inaccurate and then submitting the recordings of the trial for further review, a better option may be to have Appellate follow the established procedure for raising a challenge if inaccuracies are detected following a review by trial counsel. Nevertheless, the State would raise no objection or challenge to this Court ordering the Office of Court Administration to take custody of the recordings of Appellant’s trial and then taking any additional steps the Court deems necessary for Court Administration to certify or acknowledge the propriety of the transcript which has been prepared by Ms. Scott. The State therefore leaves Appellant’s request in this Court’s broad discretion.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: 

J. Benjamin Aplin
S.C. Bar No: 8729

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ATTORNEYS FOR RESPONDENT

January 7, 2019

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Appellant.

PROOF OF SERVICE

I, Troyeshi Brailey, Legal Coordinator, certify that I have served the *Return to 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* on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

E. Charles Grose, Jr., Esquire
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served. This 7th day of January, 2019.


TROYESHI BRAILEY
Legal Coordinator
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

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JAN 07 2019

SC Court of Appeals

January 7, 2019

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

Re: State v. Michael Cliff Eubanks:
Appellate Case No. 2018-001648

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of the Respondent's *Return to 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* in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General

Enclosures

cc: E. Charles Grose, Jr., Esquire
The Honorable David M. Stumbo
Ms. Tonnya K. Kohn
Ms. Desiree Allen
Ms. Tara Scott
C. Rauch Wise, Esquire
Victim Advocacy Division