

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

**RECEIVED**  
JAN 16 2019  
SC Court of Appeals

Appellate Case No. 2018-001684

The State,..... Respondent,

v.

Michael Cliff Eubanks, ..... Appellant.

**Reply to the State’s Return to 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**

Michael Cliff Eubanks replies to the State’s return to 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 (“Return”).

1) The State suggests that this Court should follow the procedure set forth in the Court Reporter’s Manual for “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 as not cost.” Return, at p. 3, ¶ 9.<sup>1</sup> This position ignores the fact that this Court would not be confronting this situation if the former court reporter had followed the procedures set forth in the Court Reporter Manual, returned

<sup>1</sup> The pleading served on Mr. Eubanks, not including the certificate of service, consists of four pages, the first three of which are not numbered, with paragraphs numbers 1-3 and 9.

her tapes and other records to Court Administration, and reframed from certifying that she does not have an “interest to any party” when she was, in fact, employed by the Solicitor that prosecuted Mr. Eubanks at the time she signed the verification. To the extent the Court Reporter Manual contemplates a court reporter becoming employed by a Solicitor while preparing transcripts of trials prosecuted by that office, it requires return of trial tapes and other records to Court Administration. Mr. Eubanks believes the transcript should be reviewed by court reporter different than the court reporter who took his trail, which would be a minor departure from the procedure set forth in the Court Reporter Manual.

2) The State further points out the provision in the Court Reporter Manual that provides, “Further review of the record may be permitted by the presiding judge upon written request with good cause shown.” Mr. Eubanks believes that the pleadings and exhibits filed in this Court establish “good cause” for further review of the transcript. Undersigned counsel was retained after the trial and, therefore, is not in a position to identify any specific problem with the record without being granted access to the tapes. If this Court decides the require Mr. Eubanks to further analyze the transcript before taking additional action, then this Court should provide a copy of the recordings of the trial to Mr. Eubanks, his family, and counsel.

3) Ultimately, the State represents it “would raise no objection or challenge to this Court ordering the Office of Court Administration to take custody of the recordings of [Mr. Eubank’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.” Return, at p. 3. Nor could the State object to this relief because approaching Court Administration about reviewing and certifying the transcript

was originally suggested by counsel for the State, but the State withdrew or delayed its suggestion about approaching Court Administration while undersigned counsel sought more information from the Solicitor and Court Administration. *See* attached emails. The approach suggested by Mr. Eubanks would provide the due process<sup>2</sup> and “procedural justice”<sup>3</sup> contemplated by the Court Reporter Manual.

4) Finally, by letter dated January 7, 2019,<sup>4</sup> Karama T. Baily states, if Mr. Eubanks “choose[s] to challenge the transcript, Court Administration will review the transcript for accuracy and report any findings to all parties.” This Court, the State, and Court Administration should consider 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 to be a challenge to the accuracy entire transcript. Based on this correspondence, Mr. Eubanks understands the procedure set forth in the Court Reporter’s Manual will be modified so Court Administration will conduct an independent review of the transcript rather than returning it to the original court reporter.

For the reasons set forth in Mr. Eubanks petition and this return, this Court should order an independent review of the transcript to verify its accuracy.

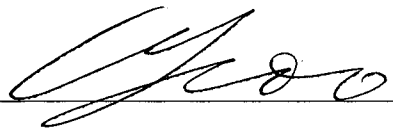
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<sup>2</sup> U.S. Am. XIV; S.C. Const. Art. I, § 3 *see also State v. Langford*, 400 S.C. 421, 429, 735 S.E.2d 471, 475 (2012) (“[A]djudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.”)

<sup>3</sup> *State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 822 (2001) (“prosecutors that they are ‘ministers of justice and not mere advocates.’ Their special ‘responsibility carries with it specific obligations to see the defendant is accorded procedural justice.” (citing *State v. Quattlebaum*, 338 S.C. 441, 527 S.E.2d 105 (2000) and Comment, Rule 3.8 of Rule 407, SCACR).

<sup>4</sup> This correspondence reveals that Court Administration was aware of the conflict of interest but did not take any action to have Mr. Eubanks’ trial transcribed by a court reporter without a conflict of interest.

Respectfully Submitted,

By  \_\_\_\_\_

E. Charles Grose, Jr.  
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*Attorney for Michael Cliff Eubanks*

January 14, 2019  
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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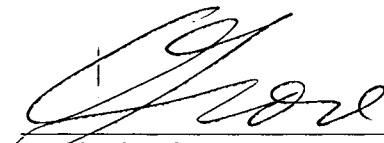
**Certificate of Service**

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

January 14, 2019

**Subject:** RE: Cliff Eubanks

**Date:** Thursday, December 6, 2018 at 9:43:37 AM Eastern Standard Time

**From:** Ben Aplin

**To:** Charles Grose

Good morning Charles,

I guess now that you have asked for information on their policies in regard to former court reporters and having them continue preparing transcripts and issuing certifications, etc, I am inclined to wait for a response rather than approaching them independently. Hopefully that response will answer any outstanding questions and put everyone's minds at ease, or perhaps they will even offer a separate certification. As for deadlines, I have no problem holding all timeframes in abeyance until the question is resolved and perhaps you asking for 30 days beyond that resolution for your initial brief, or something along those lines. However you'd like to handle that is fine, whether you just want to file it and get an actual response from me, or just make the request and say you consulted me. Either way is usually sufficient for the Court. Thanks!

Ben

**J. Benjamin Aplin**  
**Senior Assistant Deputy Attorney General**  
**Criminal Appeals**

**South Carolina Office of the Attorney General**  
**1000 Assembly Street, Suite 500**  
**Post Office Box 11549**  
**Columbia, SC 29211-1549**  
**[bjaplin@scag.gov](mailto:bjaplin@scag.gov)**  
**(803) 734-3727**

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**From:** Charles Grose [mailto:charles@groselawfirm.com]

**Sent:** Thursday, December 06, 2018 9:10 AM

**To:** Ben Aplin

**Cc:** Laura Wingard

**Subject:** Re: Cliff Eubanks

Ben,

I would like to follow up on this. Do you still think it is worthwhile to approach court administration? I'm inclined to petition the Court of Appeals to hold the briefing deadlines in abeyance while we wait on more information from the Solicitor and Court Administration and, hopefully, have someone certify the transcript.

Best,  
Charles

E. Charles Grose, Jr.  
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Email: [charles@groselawfirm.com](mailto:charles@groselawfirm.com)

---

**From:** Charles Grose <[charles@groselawfirm.com](mailto:charles@groselawfirm.com)>  
**Date:** Wednesday, November 28, 2018 at 4:58 PM  
**To:** "baplin@scag.gov" <[baplin@scag.gov](mailto:baplin@scag.gov)>  
**Cc:** Laura Wingard <[laura@groselawfirm.com](mailto:laura@groselawfirm.com)>  
**Subject:** Re: Cliff Eubanks

Ben,

I have a voicemail from Court Administration letting me know the transcript was sent Monday and asking me to call and verify, which I will do tomorrow. Attached is the letter that was mailed today to Solicitor Stumbo.

Best,  
Charles

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---

**From:** Charles Grose <[charles@groselawfirm.com](mailto:charles@groselawfirm.com)>  
**Date:** Tuesday, November 27, 2018 at 9:37 AM  
**To:** "baplin@scag.gov" <[baplin@scag.gov](mailto:baplin@scag.gov)>  
**Cc:** Laura Wingard <[laura@groselawfirm.com](mailto:laura@groselawfirm.com)>  
**Subject:** Cliff Eubanks

Ben,

I hope you are well and had a good Thanksgiving weekend.

Please see the attached letter to the Court of Appeals that will be mailed today in Mr. Eubanks case. I

have never encountered a situation where the court reporter for the trial went to work for the Solicitor's Office that prosecuted the case while the transcript request was pending. I have some thought about what to do but want to discuss them with you first. I have court later this morning in Laurens, but I could call this afternoon.

Best,  
Charles

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January 14, 2019

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

**RECEIVED**

JAN 16 2019

SC Court of Appeals

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 Reply to the State's Return to 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, along with a certificate of service.

The enclosed pleading also responds to the letter dated January 7, 2018 from Karama T. Baily. As set forth in the pleading, 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 should be considered a challenge to the accuracy of the entire transcript. Based on Ms. Baily's letter, I understand Court Administration agrees to conduct an independent review of the transcript.

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,

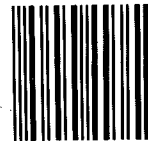
  
E. Charles Grose, Jr.

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

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SC Court of Appeals

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