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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KENNETH RAY GLEATON,

APPELLANT

APPELLATE CASE NO. 2019-002072

Motion to Preserve the Audio Recording of the Trial and Allow Appellate Counsel to Obtain a Copy of the Audio

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Counsel for Kenneth Ray Gleaton respectfully requests an order from the Court preserving the audio recording of the trial made by the court reporter and allowing appellate counsel to obtain a copy of the recording. In support of this request, counsel shows:

1. Counsel represents Appellant in the appeal of his convictions for murder, arson second degree, possession of a firearm by a convicted felon and desecration of human remains following a jury trial that took place from October 28, 2019 through November 1, 2019, in Richland County before the Honorable L. Casey Manning. Mr. Steven LeBlanc was the court reporter.

2. The transcript reflects that trial counsel for Appellant moved for a mistrial based on the judge's "demeanor and volume and tone when ruling of defense objections." (Tr. p. 706).

The motion was denied. A post-trial written motion for a new trial and sentencing hearing was filed on November 12, 2019. The basis for the new trial motion was based, in part, on the same grounds stated for the mistrial motion. (See Attached Exhibit A – Motion for New Trial and Sentencing Hearing). This motion was denied in a written order signed December 9, 2019. (See Attached Exhibit B – Order Denying Motion for New Trial and Sentencing Hearing).

3. In an additional post-trial written motion filed November 12, 2019, Appellant, by counsel, moved to preserve the audio recording of the trial and make the audio part of the record. (See Attached Exhibit C- Motion to Preserve Audio Recording of Trial and Make Part of Record). This motion was not addressed in the order denying a new trial and sentencing hearing. The notice of intent to appeal was filed on December !9, 2019. (See Attached Exhibit D – Notice of Intent to Appeal). On December 20, 2019, Appellant, by counsel, moved to clarify and/or reconsider ruling. (See Attached Exhibit E – Motion to Clarify and/or Reconsider Ruling). Attached to this motion are e-mails between trial counsel and the judge's law clerk in regard to the status of the motion to preserve the audio. The e-mails indicate that the judge believed that he had ruled on the motion to preserve the audio. Once the notice of intent to appeal was filed on December 19, 2019, the judge no longer had jurisdiction to rule on the motion to clarify or reconsider ruling.

4. On August 3, 2020, appellate counsel, via e-mail, requested a copy of the audio recording from the Court Reporter, Mr. LeBlanc. Mr. LeBlanc responded, via phone call and e-mail, that counsel needed to contact Court Administration with reference to the request for the audio recording. On October 14, 2020, after reading the full trial transcript, counsel contacted Desiree Allen with Court Administration, via e-mail, about obtaining a copy of the audio recording of the trial. Ms. Allen advised that in order to listen to the audio tape, counsel needed

to obtain written authorization from the trial judge. Ms. Allen also advised that the audio would only be retained for one year. (See Attached Exhibit F- emails).

5. In order to properly represent Appellant on direct appeal and determine if the mistrial and new trial motions based on the judge's "demeanor, and volume and tone when ruling on defense objections" should be raised on direct appeal, counsel needs to obtain a copy and listen to the audio recording. Counsel seeks a ruling from this Court rather than seeking authorization from the trial judge to simply listen to the tape because counsel seeks, not only to listen to the audio, but also to obtain a copy of the audio to potentially be designated as part of the record on appeal.

6. Counsel seeks a ruling from this Court rather than seeking a remand because the trial judge erroneously believed that he ruled on the motion to preserve the audio recording of the trial.

7. As the audio tape is only retained for one-year and the one-year retention time frame ends October 28, 2020 – November 1, 2020, counsel respectfully asks this Court to order that the audio tape not be destroyed until the Court rules on this motion. Counsel contacted Mr. LeBlanc, the court reporter, and Ms. Karama Bailey with Court Administration, both via e-mail, notifying them about the motion and requesting that the audio recording not be destroyed until the Court can rule on the motion. (See Attached Exhibit G – e-mail).

Based on the reasons listed above, counsel for Appellant respectfully moves that this Court order preservation of the audio recording of the trial and allow counsel for Appellant to obtain a copy of the audio recording.

Respectfully submitted,

Kathrine H. Hudgins
Appellate Defender

This 28th day of October, 2020.

EXHIBIT A

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)** **)** **The State of South Carolina,)** **)** **)** **vs.)** **)** **)** **Kenneth Gleaton,)** **Defendant.)**	**IN THE COURT OF GENERAL SESSIONS** **Indictment Numbers: 2018GS4001418, 2018GS4001419, 2019GS4004077, 2019GS4004079** **MOTION FOR NEW TRIAL** **- AND -** **SENTENCING HEARING**

Counsel respectfully moves before this Court requesting a new trial and a new sentencing hearing on behalf of Kenneth Gleaton for the above-listed charges.[1] Due to the factors outlined below, it is inconceivable that Mr. Gleaton's trial could be characterized as fair and impartial.

FACTUAL BACKGROUND

Mr. Gleaton was convicted of murder, arson 2nd degree, desecration of human remains, and possession of a weapon by a violent felon. He went to trial on these charges in front of the Honorable Casey Manning during the week of October 28, 2019 in Richland County General Sessions. The trial lasted for five days.

The actions and rulings of Judge Manning prevented Mr. Gleaton from having the fair and impartial trial he is entitled to under the United States Constitution and South Carolina Constitution. U.S. Const. amend VI; S.C. Const. art. I, § 14. Abusive and hostile treatment of defense counsel deprived Mr. Gleaton of a fair trial both by impugning the credibility of defense counsel in the eyes of the jury, and by chilling defense counsel's ability to effectively advocate. During those five days, defense counsel was berated and verbally abused, not allowed to make a record, and at one point

threatened for making a hearsay objection.[2] Judge Manning spoke loudly to his law clerk with mocking body language throughout defense counsel's presentation and frequently rolled his eyes when displeased with defense counsel. These actions left the jury with the impression that the defense was doing something wrong, and created an environment where defense counsel's ability to effectively advocate was stifled.

Defense counsel made several additional meritorious motions and objections that were denied throughout trial, including a motion for mistrial based off Judge Manning's demeanor. Additionally, defense counsel requested deferred sentencing and the ability to present mitigation on behalf of Mr. Gleaton. This was denied, and Mr. Gleaton was sentenced to life without a hearing.

Counsel asserts that for all of these reasons Mr. Gleaton is entitled to a new trial and a new sentencing hearing in this matter.

LEGAL ANALYSIS

I. Mr. Gleaton is entitled to a new trial based off the behavior of Judge Manning, which impugned defense counsel's credibility in front of the jury.

A judge has a duty to appear impartial, and to proceed in such a way that does not sway jurors with regard to the credibility of one party or another. Judicial Canon 3 requires that a judge "shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity..." Canon 3(B)(4) of Rule 501, SCACR. Jurors can be improperly influenced by any indication of bias coming from the bench. The

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1 This motion was denied orally at trial, but has been briefed and submitted for further consideration in accordance with Rules 29 and 35, SCRCrimP.

2 Counsel is filing a motion in tandem with this to preserve the audio recording of the trial and make it part of the record. Counsel believes this provides valuable insight as to the tone and demeanor exhibited towards the defense throughout trial. Additionally, Counsel requests the ability to supplement this motion after a transcript becomes available.

Judicial Canons seek to protect against a judge's actions from creating bias through body language and oral communication:

> A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media, and others the appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

Canon 3(B)(5), Commentary, of Rule 501, SCACR.

The South Carolina Supreme Court has a long history of taking the unbiased role of trial judge seriously. In a 1938 decision, they remanded for a new trial because of concerns over the remarks of the trial judge and the influence they may have had on the jury:

> It has long been recognized that even a slight remark, apparently innocent in its language, may, when uttered by the court, have a decided weight in shaping the opinion of the jury. Vested as the trial judge is, with superior authority, disinterested, and possessing experience not available to the ordinary layman, jurors, as a rule, are anxious to catch his vide, upon which to found their conclusions.

State v. Pruitt, 187 S.C. 58, 196 S.E. 371, 373 (1938). In coming to this decision, the *Pruitt* court looks to the even earlier history outlining the importance of impartiality from the bench: "...uninfluenced by any expression of the opinion by the judge, whose position would very naturally add great weight to any opinion he might express upon any question of fact arising in a case." *State v. White*, 15 S.C. 381, 392.; "[t]he jury must be left perfectly free in reaching a conclusion upon the testimony introduced, untrammeled by any intimation from the judge as to whether a certain fact at issue has been proved or not." *State v. Howell*, 28 S.C. 250, 255, 5 S.E. 617; and

> The judge must be careful to avoid expressing, or even intimating, any opinion as to the facts, and that if he does so, whether intentionally or unintentionally, a new trial must be granted. Under our Constitution the jury are the exclusive judges of the facts, and the true meaning and real object of the section of the Constitution above quoted is that they must be

left to form their own judgment unbiased by any expressions, or even intimations, of opinion by the judge."

State v. James, 31 S.C. 218, 235, 9 S.E. 844.

In *State v. Davis*, the South Carolina Court of Appeals remanded because of the repeated improper comments the judge made in the presence of the jury, "it is the trial judge's gratuitous comments directed at defense counsel that give rise to the reversal of Davis's conviction and sentence." No. 2006-UP-316, 2006 WL 7286742 (2006). Throughout Davis's trial, counsel was not allowed to cross-examine with questions that should have been permissible.[3] The Court stated those errors on their own would be harmless, but when combined with the commentary of the judge they were not. *Id.* at 3. The comments were primarily directed at defense counsel. Although the judge said, "I'm going to remind both sides once again about our code of ethics for treating witnesses and comments that are proper and not proper in front of a jury," the Court of Appeals found the record reflected that the judge never challenged the prosecuting attorney's ethics or competence. *Id.* The judge also made statements regarding his loss of patience, "stop all of this, because – as I told you all, I've been on a lot of cold medicine this weekend, and my patience is about to wear out with this kind of stuff." The *Davis* court relied on the South Carolina Supreme Court's decision in *State v. Pace*, where a new trial was granted because of the comments the trial court judge made about defense counsel, "the remarks of the court tended to impugn the credibility of counsel and to diminish him and his defense of appellant in the eyes of the jury." *State v. Pace*, 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994), quoting *State v. Mitchell*, 261 S.C. 452, 200 S.E.2d 448 (1973) (Justices Brailsford and Bussey, dissenting). In *State v. Freeman*, petitioner argued the "interruptions,

3 "Mr. Davis, that's not a proper area of inquiry;" and "now, I don't know how they do things down in Moncks Corner. But up here we do try to go by the rules of evidence." *Davis* at 1, 3.

opinions, and comments of the trial judge in the presence of the jury were so prejudicial to him as to deprive him of a fair and impartial trial." 319 S.C. 110, 123, 459 S.E.2d 867, 875 (1995). The Court of Appeals agreed, granting him a new trial, "we find the combined effect of the numerous unsolicited comments and the limitation of cross-examination unduly prejudiced [defendant]. *Id.*

In all of these cases, the courts responded to the seriousness of potential influence on jurors by the conduct of the trial judge. Facial expressions, body language, loss of patience, potentially innocent remarks all create the potential for improper bias. Throughout Mr. Gleaton's trial, Judge Manning demeaned and belittled defense counsel with his words and actions in front of the jurors. He cut them off constantly with an aggressive tone. His body language and overall demeanor suggested annoyance, impatience, and bestowed a lack of credibility on the defense. He rolled his eyes, made gestures when defense counsel was speaking, and made exasperated noises. Judge Manning spoke throughout the trial to his law clerk loud enough that two witnesses actually turned in response to him, thinking they were being questioned. Counsel is unclear whether the jury heard any of the commentary, but they could view the distracting interaction and critical body language.

Judge Manning also treated defense expert witnesses with a different tone and demeanor than state witnesses. He yelled at defense experts for not speaking loudly enough, and accused one of them of lying.[4] While he did previously tell witnesses to speak up, witnesses were sequestered and had not been present for prior instructions. Counsel concedes the written record may reflect similar comments to state witnesses, but maintains the tone and hostility with which the words were spoken was not the same. The difference in treatment by the Judge can influence how credible witnesses appear to the jurors.

Defense objections were met with anger, yelling, and chastising. Often, rulings were made outside the presence of the jury, and defense counsel simply needed to renew a prior objection when the state sought to introduce the matter in question. Judge Manning responded by screaming that the issue had already been ruled on. Counsel was repeatedly unable to say the full word "objection" before being cut off by yelling. "Objection," or really "obj - " was met with a very loud and angry 'sit down!,' and 'I have made my ruling.' This could appear to the jury as though counsel was being obstinate or difficult, when in fact counsel was required to object to preserve the record. Whether to object or not became a strategic decision, but not in the way the law intends. Knowing that renewing an objection would result in a display of belittlement in front of the jury forced counsel to analyze and choose between objecting to preserve the record, or staying silent and attempting to save face.

Judge Manning frequently spoke with jurors off the record and outside the presence of counsel. Counsel objected to this practice early on, and was told that there was nothing relevant to the trial being said, and therefore it would not be on the record. Throughout trial it was obvious Judge Manning was speaking and forming relationships with the jurors outside of the courtroom. For example, when the jurors returned to the courtroom he was joking with them about the baseball game and knew what teams they supported. This fostering of relationship between the judge and jury off the record had the potential to create an environment where jurors placed additional value on Judge Manning's views. As described in *Pruit*, a jury seeks to know what the judge thinks, and can be influenced by subtle biases and opinions of the judge. Additionally, Judge Manning left the option of whether to proceed with closing arguments after 4 pm on Friday or return on Saturday or Monday up to the jurors. He explained these options personally in the jury room. Counsel was

4 This accusation happened outside the presence of the jury, but his demeanor and hostility toward the witness

concerned that giving the jury these options, and having them explained by the judge, encouraged deliberation before the end of trial.

Yelling at counsel in the presence of the jury, using body language that undercut defense arguments, treating defense witnesses with more hostility than state witnesses, and not allowing defense counsel to object without causing a scene were all inappropriate displays of bias by Judge Manning that served to deprive Mr. Gleaton of a fair trial.

II. Mr. Gleaton is entitled to a new trial based off the behavior of Judge Manning, which had a chilling effect on defense counsel's advocacy.

Based off the tenets of Judicial Cannon 3, a judge cannot conduct oneself in a way that requires parties to make tactical and strategic decisions that subject themselves to sanctions or adverse actions if their arguments displease the judge. "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law"; "a judge shall hear and decide matters"; and "a judge shall be faithful to the law and maintain professional competence in it." Canon 3(B), Rule 501 SCACR. A judge may not threaten lawyers, or suggest punishment in a way that prevents them from being effective advocates and fulfilling their duties. In *State v. Simmons*, it was reversible error when the trial judge threatened to put counsel in jail during closing arguments. Upon hearing this threat, counsel stopped the argument. 267 S.C. 479, 229 S.E.2d 597 (1976).

At one point during the trial, Ms. Osteen made a proper hearsay objection. Judge Manning did not allow her to state the basis for her objection, cut her off, and said he had already ruled. His yelling and unwillingness to allow her to speak created a scene and escalated the situation. Ms.

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continued through direct examination.

Osteen continued attempting to explain her objection, while Judge Manning became increasingly heated. At the end of the direct examination, the jury was hastily sent out of the courtroom specifically for the purpose of Judge Manning confronting Ms. Osteen about her "outburst." At that point, Ms. Osteen was told if she had an outburst like that again, she would "regret it." The jury was barely out of the room when this occurred, and it is unknown what amount of this discussion was heard. Judge Manning's actions made it clear before the jurors left that he was displeased with the defense.

In response to this threat by Judge Manning, Ms. Young made a motion for mistrial. Ms. Young stated that Judge Manning was both impugning defense counsel's credibility with the jury, and chilling counsel's ability to effectively advocate for Mr. Gleaton. Specifically, Ms. Young explained the Judge's demeanor and hostility was directed only at the defense; defense counsel was being cut off before being allowed to fully make objections; Ms. Osteen was threatened; Judge Manning had been speaking loudly to his clerk; and Judge Manning's tone and body language suggested annoyance with the defense. Ms. Young stated concerns that the jury was left with the impression that defense counsel was doing something wrong, and that Judge Manning's actions influenced their credibility and had a chilling effect on counsel's ability to represent Mr. Gleaton. Judge Manning denied the motion for mistrial in a patronizing tone and immediately left the bench for the end of the day.

The following morning, Kenneth Gleaton and other members of the courthouse staff informed counsel that after Judge Manning left the bench, he very loudly complained down the hall and in his office about defense counsel. Mr. Gleaton wrote an affidavit outlining what he heard,

which included Judge Manning discussing putting his lawyers in jail.[5] When Mr. Gleaton made his way to the defense table, he promptly remarked to his lawyers, with a concerned expression, that the Judge really did not like them. Mr. Gleaton had concerns that his lawyers were doing something wrong. The destruction of client confidence, caused by the actions of Judge Manning, negatively influenced counsel's ability to advocate. Despite counsel's best efforts, Mr. Gleaton was left with valid concerns about the quality and fairness of the trial he was receiving. The lack of trust in his lawyers brought about mid-trial impacted the ability of Mr. Gleaton to assist in his own defense.

On Friday around 4:00 PM closing arguments had not started. Counsel requested that court break for the day and resume Monday morning. Judge Manning consulted with the jury and decided to continue to push forward. At around 8:30 PM, the jury returned with a verdict. After the verdict was read, Judge Manning demanded, "bring the prisoner around." Counsel requested that sentencing be deferred, stating they had family members that wished to speak in mitigation.[6] This included Mr. Gleaton's mother, who had been in the courtroom throughout the week but was not currently present and did not have a phone. Upon denying the request, Judge Manning commented on how patient he was throughout the week, and declared the matter was going to end now. Without looking up or allowing anyone to speak, Judge Manning filled out the sentencing sheets. The only question that was asked of counsel was how many days Mr. Gleaton had been in jail. Mr. Gleaton was never asked if he wished to speak. The solicitors were never asked if they wished to speak. The victim's family was never asked if they wished to speak. The defense attorneys were never asked if they wished to speak. After announcing the sentence, Judge Manning hastily exited the room. No other

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5See attached affidavit from Mr. Gleaton.

6 See attached affidavits from Mr. Gleaton's mother and grandmother for a sample of what would have been presented in mitigation.

factors were verbalized or considered. The feeling in the room was representative of the disrespect and frustration with which the trial had been run all week. Counsel believed Judge Manning's continued irritation with them prevented them from advocating for Mr. Gleaton at the sentencing phase. Counsel was afraid to speak after being verbally rebuked for requesting deferred sentencing, and after being yelled at throughout the week.

Threatening counsel, responding to objections in a manner that forced the attorneys to evaluate whether objecting was absolutely necessary,[7] negatively impacting the attorney-client relationship, and refusing to consider any mitigation or additional information in sentencing all prevented defense counsel from being effective advocates for Mr. Gleaton.

III. Mr. Gleaton is entitled to a new trial due to the improper rulings on, but not limited to, the below motions and objections.

During trial, defense counsel made the motions and objections outlined below. Judge Manning denied each one. Counsel believes these improper rulings to be prejudicial and constitute reversible error.

Specifically, the following motions were denied:

1) Motion to exclude prior bad acts of domestic violence.[8] This motion was made pursuant to SCRE 404(b), SCRE 403, and *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). Counsel moved to exclude mention of all prior acts of domestic violence, but specifically focused on testimony regarding an incident that took place September 8-9, 2017. This incident was highly prejudicial, did not fit any exception under *Lyle*, was not proven to have taken place by clear and convincing evidence, and did not fit under *res gestae*. After a pretrial hearing where Jessica Gantt, the

7 This is fully discussed in the previous section.

8 See Court's Exhibit, "Motion to Exclude Accusations of Prior Domestic Violence," for brief on this issue.

decedent's former roommate, and the decedent's son, Ashton Coulter testified, Judge Manning allowed portions of it in under "all of exceptions." No analysis pursuant to *Lyle* took place. He also stated "the kid is sketchy" in reference to Mr. Coulter, and it was counsel's understanding that the pretrial ruling was Mr. Coulter's testimony would be severely limited, and Ms. Gantt's testimony would be limited to what Mr. Gleaton told her. As trial progressed, the amount of testimony regarding the prior incident expanded greatly, to include testimony from the responding officer that night. In closing, the state made this prior incident central to their theme, ensuring the admission of this prior incident was not harmless error.

2) Motion for order of disclosure by the state.[9] A motion was made to clarify whether Roderick Dukes is or has received anything from the state or law enforcement. From Mr. Dukes' own statements, he was involved in the incident, yet he was not charged. On the record at trial, the State said they considered him a witness and they told him he would not be charged. Judge Manning determined from that there was no deal to be revealed. Judge Manning also refused defense counsel's request to advise Mr. Dukes of his right to remain silent and his right to a lawyer.

3) Request to stipulate/ clarify that Mr. Dukes was not being charged. Before Mr. Dukes testified, as a result of the motion to order disclosure by the state, the solicitor said on the record, while Mr. Dukes was in the room, that he was considered a witness and told him he would not be charged. However, on the stand, Mr. Dukes said he did not know whether he would be charged later. Counsel asked the Court to clarify in front of the jury that Mr. Dukes was not being charged with anything, and suggested this come by way of stipulation. This motion was denied.

4) Denial of ability to cross-examine Mr. Dukes regarding prior experience in jail. This goes to bias and motive to lie, as defense's theory was Mr. Dukes lied to avoid being charged.

5) Motion to suppress video clip.[10] Counsel made a motion to suppress the video clip provided by Cyril Brasley due to issues with authentication, the state violating *Brady* by not providing the extracted file, SCRE 403, and the rule of completion.

6) Motion to bifurcate felon in possession of a weapon charge.[11] Counsel made a motion to bifurcate the felon in possession of a weapon charge from the rest of the trial, pursuant to SCRE 403 and *Old Chief v. United States*, 519 U.S. 172, 117 S.Ct. 644 (1997). Alternatively, counsel offered to stipulate to the fact that Mr. Gleaton had previously been convicted of a qualifying felony.

7) Objection to the admissibility of autopsy photographs and photographs of the decedent. Counsel objected to the State submitting photographs of the decedent. Judge Manning required the non-autopsy photographs be in black and white. Counsel argued the photographs being in black and white, while all other photographs were in color placed undue emphasis on them. Additionally, colored autopsy photographs were displayed on the large screen. This happened both during Dr. Durso's testimony and during closing arguments.

8) Inability to cross-examine Dr. Durso regarding decedent's toxicology results. Judge Manning ruled that the defense was not allowed to discuss the toxicology results with the pathologist. The decedent tested positive for therapeutic levels of drugs, which corroborated the

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9 See Court's Exhibit, "Motion of Order Disclosure by the State" for brief on this issue.
10 See Court's Exhibit, "Motion to Suppress Video Clip" for brief on this issue.
11 See Court's Exhibit, "Motion to Stipulate Felon Status or Bifurcate Charge; and Exclude any Mention of Prior Record" for brief on this issue.

defendant's statement to investigators. Additionally, the drugs had been previously mentioned by state's witness Skylar Isenhower.

9) Objection to the admissibility of the facebook messenger conversation between Latoya Riley and Roderick Michael Dukes. Photographs of this conversation were erroneously admitted based off authentication and hearsay reasons.

10) Objection to the admissibility of the internet photograph of the gun; the photograph of the decedent a few years prior; and the decedent's ring with the children's names inscribed. The photograph of the gun had no probative value, as the type of gun was never determined in the case, and it was a photograph of a gun from the internet. The photograph and ring were also not part of the case and were used to stir up emotions. All of these were more prejudicial than probative and should have been excluded under SCRE 403.

11) Motion for mistrial due to behavior of Judge Manning both in front of, and outside the presence of, the jury.[12]

IV. Mr. Gleaton is entitled to a new trial pursuant to the cumulative effect doctrine.

Counsel believes these issues merit reversal individually. However, if the Court disagrees, they require that a new trial be granted under the cumulative effect doctrine. The cumulative effect doctrine provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial when viewed as a whole. *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999), referencing *Tennant v. Marion Health Care Foundation*, 194 W.Va. 97, 459 S.E.2d 374 (1995). In *Johnson*, the South Carolina Court of

12 Discussed fully in sections II and III of this brief.

Appeals found the cumulative effect of three errors warranted reversal in the case, as the errors combined deprived the respondent of a fair trial.[13] In *State v. Davis*, the trial judge made demeaning comments to defense counsel in the presence of the jury throughout trial. No. 2006-UP-316, 2006 WL 7286742 (2006). Finding reversible error, the South Carolina Court of Appeals said, "[i]If the trial judge had only made one improper comment, we would not find prejudice ... [u]nfortunately, the trial judge continued throughout the trial to make demeaning comments to defense counsel in the presence of the jury, while remaining on an even keel with the solicitor." *Id.* at 2. In *State v. Freeman*, the Court of Appeals held "the cumulative effect of the lack of latitude allowed the defense in cross-examining the State's investigating officers along with the court's comments, unfairly prejudiced the defense and necessitates the convictions be set aside," and "although each point of error raised alone is insufficient to warrant a new trial the cumulative effect is enough to require that relief." 319 S.C. 110, 123, 459 S.E.2d 867, 875 (1995).

Mr. Gleaton was not afforded a fair trial for all of the reasons expounded upon above. The manner in which Judge Manning conducted himself in front of the jury created bias and undue prejudice towards the defense. Judge Manning's behavior outside the presence of the jury made it impossible for defense counsel to properly advocate. The improper rulings misshaped the trial, confused the issues, and did not allow Mr. Gleaton a fair day in court. The cumulative effect of these injustices demands that Mr. Gleaton be given a new trial.

V. Mr. Gleaton is entitled to a sentencing hearing in which he has the opportunity to present mitigation.

13 The South Carolina Supreme Court found the cumulative error doctrine did not warrant reversal because only one of the errors was prejudicial, but still reversed based off the prejudice of the single error. *State v. Johnson*, 334 S.C.

The United States Supreme Court has held the Eighth and Fourteenth Amendments to the Constitution require mitigation to be considered in death penalty cases. *Lockett v. Ohio*, 438 S.C. 586, 604, 98 S.Ct. 2954, 2964 (1978). While death is different, there is an established practice of individualized sentencing demanded by public policy. *Id.* at 605, 2965. Post-conviction relief is granted routinely when mitigation is presented, but not in a complete enough fashion to satisfy the needs of individualized sentence consideration. In *Weik v. State*, the South Carolina Supreme Court remanded for a new sentencing hearing when failure to present adequate mitigation in death penalty case was deemed deficient performance. 409 S.C. 214, 761 S.E.2d 757 (2014). The Court reiterated, "[a]ny competent counsel knows the importance of thoroughly investigating and presenting mitigating evidence." *Id.* at 234, 767, quoting *Romano v. Gibson,* 239 F.3d 1156, 1180 (10th Cir.2001). Although the federal system has sentencing guidelines, the United States Supreme Court recognized there is still case-by-case discretion, stating they should "consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." *Gall v. United States*, 552 U.S. 38, 52, 128 S.Ct. 586, 598 (2007).

There was no individualized sentence hearing in this case. Mr. Gleaton was sentenced to life in prison without consideration of any factors outside of what was presented during trial.[14] While counsel did not formally object at the time to being denied a mitigation hearing, they did request deferred sentencing and verbalize that they had mitigation to present. The mood in the room was not receptive to any requests, and efforts by defense counsel would be futile. Counsel was afraid

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78, 512 S.E.2d 795 (1999). However, the Supreme Court did not take issue with the explanation or existence of the cumulative effect doctrine.

14 See section II for more complete explanation of what took place after trial.

to speak after being verbally rebuked for requesting deferred sentencing, and after being yelled at all week when asking for rulings to be repeated on the record. Mr. Gleaton is entitled to the Court's consideration of mitigating factors when determining his sentence and respectfully requests a new sentencing hearing.

VI. Given the contentious atmosphere and lack of receptiveness to counsel throughout the trial, the doctrine of futility is applicable and should be relied on as a supplement for any issues not deemed properly preserved.

The doctrine of futility is "an established exception to the general rule of issue preservation." *State v. Davis*, No. 2006-UP-316, 2006 WL 7286742 (2006). When "the tone and tenor of the trial judge's remarks ... were such that any objection would have been futile," there is not a waiver of the issue. *Davis* quoting *State v. Pace,* 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994).

While counsel did their best to make a record and preserve all issues, Judge Manning constantly cut them off and made at times made it near impossible. Counsel relies on the doctrine of futility to supplement any objections or issues where the Court is concerned with preservation.

CONCLUSION

In addition to this motion, please see attached accompanying documents. Affidavits from Maisie Osteen, Laura Young, and Sarah Jurick give first-hand accounts of their experiences during trial. Affidavit from Kenneth Gleaton attests to his perceptions of Judge Manning's attitude towards his lawyers throughout his trial. Affidavits from Mr. Gleaton's mother and grandmother show a glimpse of what would have been presented in mitigation. A copy of the motion to preserve trial audio and make it part of the record was filed separately in tandem with this motion. Additionally, Counsel requests the ability to supplement this motion after the transcript has been received.

WHEREFORE, counsel respectfully requests that a new trial be granted for Mr. Gleaton, and Mr. Gleaton receive a sentencing hearing in this matter.

Sarah Christine Jurick

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Columbia, South Carolina
This 12th day of November 2019.

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)** **)** **The State of South Carolina,)** **)** **)** **vs.)** **)** **)** **Kenneth Gleaton,)** **Defendant.)**	**IN THE COURT OF GENERAL SESSIONS** **Indictment Numbers: 2018GS4001418, 2018GS4001419, 2019GS4004077, 2019GS4004079** **AFFIDAVIT OF SARAH JURICK**

I, Sarah Christine Jurick, am an assistant public defender in Richland County. I represent Kenneth Gleaton. During the week of October 28, 2019, Mr. Gleaton went to trial on the above-listed warrants in front of the Honorable L. Casey Manning.

My impressions of the trial are as follows:

1) Throughout the week, Judge Manning gave the impression from his body language and demeanor that he did not want to be there. He made a lot of exasperated noises, talked about how tired he was every morning, appeared as though he was sleeping, and asked counsel to repeat things often as though he was not listening.

2) When my colleagues objected with confidence in trial, they were yelled at and told to sit down. I am ashamed to say this effected the number of objections I made and the manner in which I made them. My objections were meeker and more timid than usual. Sometimes I did not object at all. Aside from not wanting to be yelled at for personal reasons, I was concerned about how our being yelled at was interpreted by the jury.

3) Judge Manning spoke with jurors outside the courtroom several times. It was clear from the interactions between him and the jurors inside the courtroom that he had fostered positive relationships with them. I am concerned that because of this, Judge Manning's negative interactions with us had a larger impact on our credibility.

4) Multiple people commented throughout trial that it seemed like the defense was being disproportionally criticized by the Judge. Our client, Kenneth Gleaton, told us that he overheard Judge Manning talk about putting us in jail when deputies were walking him to the holding cell. Mr. Gleaton expressed concerns about our relationship with the Judge.

5) Judge Manning was impatient and irritable all week. He actually announced this several times. His impatience came to a head on Friday night after the verdict was read. Judge Manning denied deferred sentencing saying something to the effect of "I've been so patient all week, let's just get this over with," did not give us or the prosecutors an opportunity to speak, and hastily sentenced Mr. Gleaton to life. It was obvious at this

point that nothing we said would be considered.

6) Overall, we were not treated professionally or with any amount of respect, both in front of our client and in front of the jury. I spent over two years getting to know Mr. Gleaton and earning his trust. I believe the confidence in his lawyers and in his trial was destroyed when he saw how we were treated all week.

7) I do not believe Mr. Gleaton had a fair trial. Judge Manning's continued yelling at us altered our performance in front of the jury, and could very likely have influenced their opinions of us and our credibility.

8) I have been at the Richland County Public Defender Office for over 5 years. Prior to that, I clerked for Capital Defense and was present for multiple full-week trials. I have never witnessed lawyers being treated with this little respect throughout trial. I have never filed any complaint, or motion criticizing, a judge before today.

Sign: 

Print: Sarah Jurick

Date: Nov 12, 2019

SWORN AND SUBSCRIBED before me this 12th day of November, 2019.

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)** **)** **The State of South Carolina,)** **)** **)** **vs.)** **)** **)** **Kenneth Gleaton,)** **Defendant.)**	**IN THE COURT OF GENERAL SESSIONS** **Indictment Numbers: 2018GS4001418,** **2018GS4001419, 2019GS4004077, 2019GS4004079** **AFFIDAVIT OF MAISIE OSTEEN**

My name is Maisie Osteen. I am an Assistant Public Defender at the Richland County Public Defender's Office in Columbia, South Carolina. I represented Kenneth Gleaton and acted as the second-chair at trial the week of October 28, 2019. These are my perceptions of the trial:

1. During the trial, Judge Manning appeared constantly displeased with defense counsel. This was evidenced by Judge Manning relentlessly yelling at us as we tried to present arguments, his response to our objections, and his incessant interrupting when we were trying to make the record or present arguments to the Court.
2. Specifically, one instance highlights the jarring demeanor from the bench. One witness, Jessica Gantt, began to talk about information that she received from the decedent. Ms. Gantt said "she told me." At that point, I objected to the hearsay statement. Judge Manning said something to the effect of "she [the witness] is saying what the Defendant said. Overruled." As Judge Manning was inaccurate with his recounting of the Witness statement, I tried to offer the Court more information about what the witness said. He got very mad and roared at me to sit down, which I immediately did.
3. At the direction of Opposing Counsel, the Witness, Jessica Gantt, continued to testify about information that she learned from the decedent. But, because of the way Judge Manning reacted I was afraid to upset him further and to have him admonish me in front of the jury so I did not object.
4. Once the direct examination of the witness was concluded, he asked the jury to leave. As soon as the door closed he turned to me and said something to the effect of "Ms. Osteen, if you have another outburst like that, you will regret it."
5. I did not know what Judge Manning meant by either "my outburst" or how I would "regret it" but it was clear that what I considered advocacy was upsetting him. His reaction forced me into a constant calculation of whether zealously advocating for my client by objecting to inadmissible testimony was beneficial in any way to Kenneth.
6. During my objection, I did not raise my voice beyond what would be a clear speaking voice. I did not loose control of my language and I, certainly, was not trying to disrespect Judge Manning or violate Rule 138, South Carolina Rules of Criminal Procedure. I was never given an opportunity to be heard.
7. Following the Judge threatening me and my co-counsel's Motion for a Mistrial, I spoke to Kenneth about what was going on. He was clearly upset at how we were treated and he said "he really doesn't like you guys." I could see that he was shutting down and afraid at the repercussions we would be facing if we continued to advocate for him.
8. Finally, once the jury returned its verdict, at 8:30 p.m. on Friday, November 1, 2019 Judge Manning requested that the inmate be "brought around for sentencing." I asked for sentencing to be deferred. Kenneth had family that wanted to be present and we had mitigation evidence that

we wanted to present through the witnesses. Judge Manning denied the request by saying "he had been patient all week." We walked with Kenneth around to stand before Judge Manning and we waited for our turn to address the Court and inform the Judge of all of the reasons leniency should be considered. That moment never came. Judge Manning read the indictment numbers and sentenced Kenneth to life. It was one of the most dehumanizing, unjust moments I have experienced in a courtroom to date.

9. I have been an assistant public defender for five years. I have been before the Court in pleas, hearings, and trials thousands of times. I have never filed an affidavit attesting to my treatment before the Court.

Sign: MBOA

Print: Maisie Bruce Osteen

Date: 11.12.2019

SWORN AND SUBSCRIBED before me this 12th day of November, 2019.

Deborah Fleming

Notary Public for South Carolina

My Commission Expires: 04.23.29.

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)** **)** **The State of South Carolina,)** **)** **)** **vs.)** **)** **)** **Kenneth Gleaton,)** **Defendant.)**	**IN THE COURT OF GENERAL SESSIONS** **Indictment Numbers: 2018GS4001418,** **2018GS4001419, 2019GS4004077, 2019GS4004079** **AFFIDAVIT OF LAURA YOUNG**

My name is Laura Young. I am the Deputy Public Defender at the Richland County Public Defender's Office in Columbia, South Carolina. I represented Kenneth Gleaton and acted as the third-chair attorney at trial the week of October 28, 2019. The information in this affidavit is within my personal knowledge and reflects my experiences at the trial:

1. The Honorable L. Casey Manning was the presiding judge at the trial. From the outset, he yelled constantly. He would ask questions and before anyone could speak, he would loudly speak over us. His attitude towards defense counsel was demeaning and sent the message that he did not want to be there.
2. His actions directly contradicted his words – for example, he would say that the record was important, but he would frequently speak over defense counsel during her efforts to preserve issues for the record. He also complained numerous times, on and off the record, that defense counsel and the solicitors were causing problems by interacting with each other in a contentious manner, which was never the case throughout the entirety of the trial. Furthermore, after yelling loudly and cutting people off, he would repeatedly tell us to calm down despite the fact that we never raised our voices or lost our tempers. At times, it seemed as though Judge Manning was not listening or paying attention during the trial. On several occasions he had to ask us what was happening in order to make rulings or determine objections. This happened on the record and at the bench. He would close his eyes and place his head in his hands. He stated several times throughout the week that he was tired and even started one morning off by telling us that he was in a very bad mood.
3. Judge Manning seemed frustrated and irritable and expressed as much through his body language and behavior. He visibly rolled his eyes during objections, stood up and leaned over his chair during defense counsel's cross-examinations, crossed his arms and angrily stared at the defense table. He moaned and sighed audibly during defense counsel's objections.
4. This was frustrating and embarrassing. I felt as though the jury believed that we were doing something wrong and perceived that the judge had a reason to be upset with us. This was particularly troubling to me because Judge Manning was friendly with the jury, joked with them and spoke to them off the record several times in the jury room, outside the presence of the lawyers. It felt like he had created a bond with them and then in court, openly broadcasted his displeasure with the defense attorneys.
5. He lacked patience and spoke loudly and negatively about defense counsel to his law clerk while the jury was present in the courtroom and witnesses were testifying. Several times witnesses paused during their testimony and turned to the judge because it was so distracting.
6. I have practiced as a criminal defense lawyer for 14 years in both Georgia and South Carolina and have never moved for a mistrial based on a judge's demeaning treatment of defense counsel. In this case, I was compelled to do so following a threat to my co-counsel after she made a valid

hearsay objection. She did not raise her voice and acted with decorum while attempting to clarify the objection when the judge mistakenly thought the testimony was something it was not.

7. The entire week was exhausting and draining due to the constant verbal attacks from the bench. I believe that I definitely made poor choices regarding potential objections or arguments due to the ongoing calculation of acting in my client's best interest while also trying not to anger the judge in front of the jury.

Sign: _____

Print: Laura Young

Date: November 12, 2019

SWORN AND SUBSCRIBED before me
this 12th day of November, 2019.
Deborah Fleming

Notary Public for South Carolina
My Commission Expires: 04·23·29.

AFFIDAVIT
OF
KENNETH GLEATON

I, Kennetn Gleaton, (DOB: 8-31-1979) attest to all of the following as my true and honest account of my trial on the week of October 28, 2019. I attest to the following:

1. On ~~@~~ Oct 28, 2019 I went to trial ~~court~~ KG on a #4 count indictment in front of the Honorable Casey Manning

2. As son as the trial started Judge Manning was anger at my lawyers. He wouldnt let them speak and then he would yell at them. He was hostile.

3. At one point my lawyer stood up to object and it made Judge manning so mad, The tone of his voice was extremely angery. Judge Manning Yelled at my attorny and treated her.

4. Judge Manning trow his robe down wild he was yelling and he acted like my attorneys were doing something wrong. I thought he was acting really Crazy and it made me real nervors.

KG 1/3

5. When I was being taking to holding that day, as we left the Court room, you could hear judge Manning screaming about my lawyers. The ~~duputy~~ Deputy left me in the hall way and went and asked judge Manning to quite down. He sounden Real angerly at my lawyers

6. The next morning he was still screming and hollary and saying he should have held ms young and maisie in Conteep of Court. "He said they now the evidence was comming in!" He was very loud- this time his door was shut and we could still hear his carrying on.

7. Based on the way judge Manning was yealling at my lawyers. I know I wasitgoing to get a fare trial. The jury heard him yelling at them. I know they would think I did Sometiong wrong.

8. I thought we were going to have a so called sentening hearing after ~~the~~ the trail where my lawyers would present stones of my life and leave from my loved ones. Based on the way

8 cont. Judge Manning was acting it would not matter. I gave up hope he would listen. He dindnt want to hear it for real.

sign: Kenneth Clayton

print: Kenneth Clayton

date: 11-12-19

SWORN TO AND SUBSCRIBED
BEFORE ME
this 12th day of November, 2019

Notary Public for South Carolina
My Commission Expires: MARCH 8, 2026

KB 3/3

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)**	**IN THE COURT OF GENERAL SESSIONS**
The State of South Carolina,)	**Indictment Numbers: 2018GS4001418, 2018GS4001419, 2019GS4004077, 2019GS4004079**
vs.)	**AFFIDAVIT OF LILLIE MARIE STEVENSON**
Kenneth Gleaton,) **Defendant.)**	

My name is Lillie Marie Stevenson. I am 54 years old, my birthday is May 26, 1965 and I live at 1440 Head Street, Columbia, South Carolina.

I am Kenneth Gleaton's biological mother. If I were able to speak in Court this is what I would have told the Court:

1. I was raised in Orangeburg, South Carolina. I was one of twelve children of Hazel Gleaton and Larry Lee Gleaton.

2. We had a tough childhood. My father, Larry Gleaton, was a drunk. He was very abusive to my mother and the kids. He was particularly violent with one of my sisters. His violence included sexual assaults. When I was a little older, my father tried to come on to me but I was able to stop him.

3. When I was about eight-years-old one of my older brothers started messing with me sexually. He was about 16 years old. I did not want him to do that but I couldn't stop him.

4. Because my brother continued to rape me, I got pregnant with Kenny when I was thirteen. I didn't tell anyone about my brother assaulting me because everyone had a lot going on and I didn't want to make trouble.

5. When I had Kenny, I was so young and using drugs and alcohol because my brother was still raping me. It was the only way I knew to escape. So Kenny was raised by my mom and he always thought we were siblings. I learned a few years ago that he found out I was his mom after getting a copy of his birth certificate from vital records.

6. Our home life when we were children was not good. Kenny had a really rough time. Larry was mean to him and mean to our Mom and was very violent. Kenny was in the house often when he would beat my Mom and there really wasn't anything that he could do because he was little.

7. Because of the things that happened to me when I was young I turned to alcohol and drugs at an early age. I didn't receive counseling or anything for all the trauma I experienced as a kid and, therefore, the alcohol and drugs helped me dull that pain. I have been in therapy as an older adult, but I still struggle daily.

8. Kenny and I did not have a close relationship as he got older because as soon as I could I moved to Columbia to try and find a better life. I have no real relationship with anyone in my family. I am angry with them for what happened to me and the only way I know to cope is to keep my distance.

9. I struggled all of my life with both the trauma of being raped by my older brother and having a child that I couldn't take care of due to my problems with alcohol and drugs. I still live with guilt about not being a good mom – or any kind of a mom – to Kenny.

If I were able to speak at Court I would say that I love Kenny and that I am sorry that I wasn't able to be there for him.

Sign: Lillie Stevenson

Print: Lillie Stevenson

Date: 11-6-19

Sworn and subscribed before me

this 6th day of November, 2019.

Notary

My commission expires: September 21, 2020

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND** **The State of South Carolina,** **vs.** **Kenneth Gleaton,** **Defendant.**	))))))))))	**IN THE COURT OF GENERAL SESSIONS** **Indictment Numbers: 2018GS4001418,** **2018GS4001419, 2019GS4004077, 2019GS4004079** **AFFIDAVIT OF HAZEL GLEATON**

My name is Hazel Gleaton. I am 77 years old, my birthday September 29, 1942 and I live at 311 Old Salem Road, Barnwell, South Carolina.

I am Kenny's "Mama." While he is not my biological child, he is my grandchild; I raised him from a newborn baby. If I were at court for the mitigation, I would tell the Court the following:

1. As a child, he saw very tough and rough times. He saw difficulties between my husband and me. I was married at 13 to a 33 year-old man. My husband, Larry Lee Gleaton, was an alcoholic and he was very violent. He was particularly violent with me but he also assaulted the children. Kenny saw a lot of violence. Kenny is the second youngest of twelve children.

2. Kenny's father figure, Larry Gleaton, was in and out of jail and prison for property crimes, domestic violence, and other petty crimes. He passed away in jail in 1991 from complications related to alcoholism.

3. In addition, as was briefly mentioned, Kenny is actually my Grandchild. His biological mother, Lily, was my daughter. She was 13 years old when she became pregnant and she had Kenny a little before she turned 14. At the time, she was not able to raise Kenny because was messing around with drugs and alcohol, running away, and dealing with her own troubles. Kenny only knew me as his mother and Lily as his sister.

4. Kenny and Lillie were raised together. Lillie had a very difficult life and she struggled a lot. When Kenny was about 12, he watched her try to kill herself. He was in the house when Lillie came home from being out all day. She had taken something and had two big bottles of alcohol. She was taken out in an ambulance and was in the ICU for a week. Kenny visited her in the hospital.

5. When Kenny was young he idolized his brother, Gary Gleaton. Gary was about 11 years older than Kenny but any time Gary wasn't at work you would see them together. Gary took care of Kenny. Gary took Kenny under his wing – took him fishing, hung out with him, helped him. Gary died on New Year's Eve of 1989, he had just turned 21. He was the passenger in a car when there was a terrible accident. After Gary died, Kenny lost his idol and really feel in with the wrong crowd. I don't exactly know when or what was going on but he started getting in trouble.

6. When Kenny started hanging around with the wrong crowd he started getting into trouble. He did go to prison but when he was home he really started to help out as a man. When he got out the first time he stayed with me and his brother – Stephen. Kenny would cook in the kitchen and

cook-out. He would provide everything for all my family that would come to dinner. He would pay for the meals and cook out for all of us, he brought everyone together. Also, when he was home with me he would help me with all the household chores – like cleaning and yard work. He was always helpful around the house. When Kenny stayed with me he would do anything he could to help me. If I asked him for help he was always willing to help.

7. As an adult Kenny took a number of the youngins under his wing. He would give them guidance and try and make sure they didn't get in trouble. This went for both family members – like younger cousins – and just kids around the neighborhood.

If I were able to speak at Court I would say that we have not given up on Kenny. I love him and I will always love him and I will never stop loving him.

Sign: Hazel Blanton

Print: Hazel Blanton

Date: 11. 7. 19

SWORN AND SUBSCRIBED before me

this 7th day of November, 2019.

Notary Public for South Carolina

My Commission Expires: 4-4-28

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)** **)** **The State of South Carolina,)** **)** **)** **vs.)** **)** **)** **Kenneth Gleaton,)** **Defendant.)**	**IN THE COURT OF GENERAL SESSIONS** **Indictment Numbers: 2018GS4001418, 2018GS4001419, 2019GS4004077, 2019GS4004079** **CERTIFICATE OF SERVICE**

I certify that the foregoing Motion for a New Trial and Sentencing Hearing has been served on Assistant Solicitor Vance Eaton by hand delivering a copy to his office at 1701 Main St., Columbia, SC 29201.

This 12 day of November, 2019.

Steven Harper
Paralegal

RICHLAND COUNTY
FILED
2019 NOV 12 PM 3:06

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF GENERAL SESSIONS
State of South Carolina, vs. Kenneth Gleaton, Defendant.	)	Indictment Nos.: 2018GS4001418; 19; 2019GS4004077; 79 **ORDER DENYING MOTION FOR NEW TRIAL AND SENTENCING HEARING**

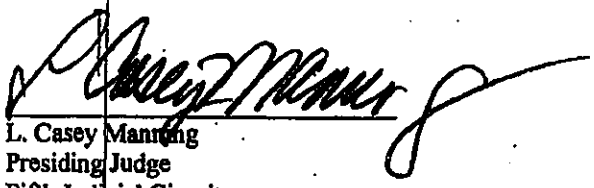
On Friday, November 1, 2019, the above named Defendant, Kenneth Gleaton, was found guilty at trial of murder, arson second degree, desecration of human remains, and possession of a weapon by a violent felon. The Defendant was sentenced to life in prison without the possibility of parole on the murder charge to run concurrently with the sentences on the other charges. The State was represented by Deputy Solicitor April Sampson and Assistant Solicitors Vance Eaton and Stephanie Taylor. The Defendant was represented by Deputy Public Defender Laura Young and Assistant Public Defenders Sarah Jurick and Maisie Osteen.

On November 12, 2019, counsel for the Defendant filed a motion for new trial and sentencing hearing. The Defendant had a fundamentally fair trial that included judicial rulings made in accordance with the law and rules of evidence and is therefore not entitled to a new trial. Much of what is raised by the Defendant is not appropriate for a new trial but rather for collateral proceedings. What the Defendant presents in the way of affidavits is new evidence. A new trial motion cannot be used to raise new arguments. *State v. Holmes*, 320 S.C. 259, 266, 464 S.E.2d 334, 338 (1995).

The Defendant is not entitled to a new trial based on his claim of a chilling effect on his attorney's advocacy. Counsel for the Defendant continued to advocate for their client by way of motions, objections and arguments, when appropriate, throughout the duration of the trial. Furthermore, the cumulative effect doctrine does not apply to this situation as the defendant has failed to show that the cumulative effect of any errors affected the outcome of the trial and, as such, failed to show that they adversely affected his right to a fair trial. *State v. Beekman*, 405 SC 225 (App 2013).

Based upon the foregoing, I conclude the Defendant is not entitled to a new trial or sentencing hearing. Therefore, the Defendant's motion is denied.

AND IT IS SO ORDERED.



L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

December 9, 2019
Columbia, South Carolina

EXHIBIT C

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)** **)** **The State of South Carolina,)** **)** **)** **vs.)** **)** **)** **Kenneth Gleaton,)** **Defendant.)**	**IN THE COURT OF GENERAL SESSIONS** **Indictment Numbers: 2018GS4001418, 2018GS4001419, 2019GS4004077, 2019GS4004079** **MOTION TO PRESERVE AUDIO RECORDING OF TRIAL AND MAKE PART OF RECORD**

YOU WILL PLEASE TAKE NOTICE that counsel for Kenneth Gleaton is respectfully requesting the Court preserve the audio recording from his trial, and make it part of the record. Kenneth Gleaton was on trial for murder, arson 2nd degree, desecration of human remains, and possession of a weapon by a violent felon. This matter was heard in Richland County General Sessions the week of October 28 in front of the Honorable L. Casey Manning.

Counsel recognizes the written transcript is the official record, but believes the audio recording is necessary to understand the tone and tenor of the trial. Counsel's motion for a mistrial and motion for a new trial are based, in part, on the prejudicial impact created by Judge Manning's threatening attitude and demeanor. The Court's ability to listen to the audio in tandem with the transcript would assist in their understanding and evaluation of Mr. Gleaton's motions.

WHEREFORE, counsel respectfully requests the audio for the jury trial on the above-listed warrants be preserved and added to the record.

Sarah Christine Jurick
Maisie Bruce Osteen
Attorneys for Defendant

Columbia, South Carolina
This 12th day of November, 2019.

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND** **The State of South Carolina,** **vs.** **Kenneth Gleaton,** **Defendant.**	))))))))))	**IN THE COURT OF GENERAL SESSIONS** **Indictment Numbers: 2018GS4001418, 2018GS4001419, 2019GS4004077, 2019GS4004079** **CERTIFICATE OF SERVICE**

I certify that the foregoing Motion to Preserve Audio Recording of Trial and Make Part of the Record has been served on Assistant Solicitor Vance Eaton by hand delivering a copy to his office at 1701 Main St., Columbia, SC 29201.

This 12 day of November, 2019.

Steven Harper
Paralegal

EXHIBIT D

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
L. Casey Manning, Circuit Court Judge

Case Nos.

18-GS-40-1418, 18-GS-40-1419, 19-GS-40-4077, 19-GS-40-4079

The State,.....Respondent,

v.

Kenneth Gleaton,.....Appellant.

NOTICE OF APPEAL

Kenneth Ray Gleaton appeals his conviction and sentence in this case. The Honorable L. Casey Manning heard the trial during the week of October 28, 2019 – November 1, 2019 and imposed sentence on November 1, 2019. This appeal is taken from the order of the Honorable L. Casey Manning, dated December 9, 2019, which denied appellant's motion for a new trial.

18-GS-40-1418 – Murder: Life sentence
18-GS-40-1419 – Arson 2nd degree: 20 years, concurrent
19-GS-40-4077 – Poss. of firearm by convicted felon: 5 years, concurrent
19-GS-40-4079 – Desecration of human remains: 10 years, concurrent

December 19, 2019

Sarah Christine Jurick
Attorney for Defendant
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Other Counsel of Record:
Vance Eaton
Office of the Solicitor, Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street
Columbia, South Carolina 29201
Attorney for Respondent

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions
L. Casey Manning, Circuit Court Judge

Case Nos.

18-GS-40-1418, 18-GS-40-1419, 19-GS-40-4077, 19-GS-40-4079

The State,.....Respondent,

v.

Kenneth Gleaton,.....Appellant.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Notice of Intent to Appeal in the above-referenced case has been served upon opposing counsel by delivering same this date to his office at the Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201.

December 19, 2019

Sarah Christine Jurick
Attorney for Defendant
Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Other Counsel of Record:
Vance Eaton
Office of the Solicitor, Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street
Columbia, South Carolina 29201
Attorney for Respondent

EXHIBIT E

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)** **)** **The State of South Carolina,)** **)** **)** **vs.)** **)** **)** **Kenneth Gleaton,)** **Defendant.)**	**IN THE COURT OF GENERAL SESSIONS** **Indictment Numbers: 2018GS4001418, 2018GS4001419, 2019GS4004077, 2019GS4004079** **MOTION TO CLARIFY AND/OR RECONSIDER RULING**

MOTION TO CLARIFY OR RECONSIDER RULING

On November 12, 2019, Counsel for Kenneth Gleaton filed a motion to preserve the audio recording of his trial and make it part of the record. Counsel believes this was the first time that the issue was raised and is requesting a ruling by the Court at this time. However, there is some debate as to whether there was a motion and ruling to the same effect made during trial. *See* Attachment 1 (Emailed communication between The Honorable L. Casey Manning and Counsel for Kenneth Gleaton). Therefore, Counsel is also requesting clarification and reconsideration of any prior ruling. This motion is filed pursuant to SCACR 205.

The audio is necessary to understand the tone and tenor of the trial, which is relevant in considering the grounds in the motion for a new trial. A Court Order preserving the audio and making it part of the record is necessary to ensure the audio exists for the duration of the case and can be considered by relevant parties in the future.

IT APPEARS THAT:

1) The burden to furnish a sufficient record to substantiate claims is on the Appellant. *Hamilton v. Greyhound Lines East*, 281 S.C. 442 (1984). In Hamilton, the case was dismissed because the Appellant failed to meet that burden, and the Court determined, "there is simply

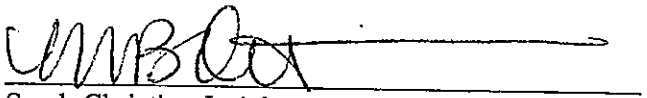
nothing before us from which we could conclude that the trial court should be reversed." *Id.* at 444.

2) Pursuant to SCACR 607, the audio recordings can be destroyed after one year if there is no challenge to the accuracy of the transcript. By refusing to make the audio part of the record, it can be destroyed prior to the outcome of the case.

3) The audio recordings are necessary to make a determination on appeal regarding the arguments made in the motion for new trial. Specifically, the motion refers to tone, which cannot be fully understood without the preserved trial audio.

4) The failure to record the entire proceedings in the trial court and make them part of the record violates a defendant's right to full review of his case on appeal, his right to the assistance of counsel on appeal and in pursuing post conviction remedies, and his right to equal access to courts which may review his conviction on either appeal or collateral attack as guaranteed by the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. *See, e.g., Gardner v. Florida*, 430 U.S. 349 (1977); *Gregg v. Georgia*, 428 U.S. 153 (1976); *Britt v. North Carolina*, 404 U.S. 226 (1971); *United States v. Selva*, 559 F.2d 1303 (5th Cir. 1977); *United States v. Brumley*, 560 F.2d 1268, 1281 (5th Cir. 1977).

WHEREFORE, Counsel respectfully requests the Court order that the audio in Kenneth Gleaton's trial be preserved and made part of the record.



Sarah Christine Jurick
Maisie Bruce Osteen

Columbia, South Carolina

This 20th day of December, 2019.

Attachment 1

LAURA YOUNG

From: Manning, L. Casey Law Clerk (Shelby Herbkersman) <CManningLC@sccourts.org>
Sent: Wednesday, December 18, 2019 12:57 PM
To: SARAH JURICK; APRIL SAMPSON; Vance Eaton; STEPHANIE TAYLOR; MAISIE OSTEEN; LAURA YOUNG
Subject: RE: Kenneth Gleaton Signed Order

Good afternoon Sarah,

I have presented everything to Judge Manning and his suggestion was for y'all to file a motion to reconsider regarding the preservation of the audio from trial.

I hope this helps.

Shelby Herbkersman
Law Clerk to the Honorable L. Casey Manning
Richland County Judicial Center
P.O. Box 192
1701 Main Street, Suite 214
Columbia, SC 29201
Phone: 803-576-1774
Fax: 803-576-1744
www.sccourts.org
cmanningsc@sccourts.org

From: SARAH JURICK <JURICK.SARAH@richlandcountysc.gov>
Sent: Monday, December 16, 2019 4:05 PM
To: Manning, L. Casey Law Clerk (Shelby Herbkersman) <CManningLC@sccourts.org>; APRIL SAMPSON <SAMPSON.APRIL@richlandcountysc.gov>; Vance Eaton <Eaton.Vance@richlandcountysc.gov>; STEPHANIE TAYLOR <TAYLOR.STEPHANIE@richlandcountysc.gov>; MAISIE OSTEEN <OSTEEN.MAISIE@richlandcountysc.gov>; LAURA YOUNG <YOUNG.LAURA@richlandcountysc.gov>
Subject: RE: Kenneth Gleaton Signed Order

Hi Shelby,

I spoke with Ms. Young, and we still do not recall making this argument on the record. We are asking for a ruling now for the sake of clarity.

By way of authority, our position is that:

1) The burden to furnish a sufficient record to substantiate claims is on the Appellant. *Hamilton v. Greyhound Lines East*, 281 S.C. 442 (1984). In *Hamilton*, the case was dismissed because the Appellant failed to meet that burden, and the Court determined, "there is simply nothing before us from which we could conclude that the trial court should be reversed." *Id.* at 444.

2) Pursuant to SCACR 607, the audio recordings can be destroyed after one year if there is no challenge to the accuracy of the transcript. By refusing to make the audio part of the record, it can be destroyed prior to the outcome of the case.

3) The audio recordings are necessary to make a determination on appeal regarding the arguments made in the motion for new trial. Specifically, the motion refers to tone, which cannot be fully understood without the preserved trial audio.

4) The failure to record the entire proceedings in the trial court and make them part of the record violates a defendant's right to full review of his case on appeal, his right to the assistance of counsel on appeal and in pursuing post-conviction remedies, and his right to equal access to courts which may review his conviction on either appeal or collateral attack as guaranteed by the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. See, e.g., *Gardner v. Florida*, 430 U.S. 349 (1977); *Gregg v. Georgia*, 428 U.S. 153 (1976); *Britt v. North Carolina*, 404 U.S. 226 (1971); *United States v. Selva*, 559 F.2d 1303 (5th Cir. 1977); *United States v. Brumley*, 560 F.2d 1268, 1281 (5th Cir. 1977).

Thank you,

Sarah

From: Manning, L. Casey Law Clerk (Shelby Herbkersman) <CManningLC@sccourts.org>
Sent: Friday, December 13, 2019 12:14 PM
To: SARAH JURICK <JURICK.SARAH@richlandcountysc.gov>; APRIL SAMPSON <SAMPSON.APRIL@richlandcountysc.gov>; Vance Eaton <Eaton.Vance@richlandcountysc.gov>; STEPHANIE TAYLOR <TAYLOR.STEPHANIE@richlandcountysc.gov>;

MAISIE OSTEEN <OSTEEN.MAISIE@richlandcountysc.gov>; LAURA YOUNG <YOUNG.LAURA@richlandcountysc.gov>
Subject: RE: Kenneth Gleaton Signed Order

Sarah,

I have spoken to Judge Manning about this and he requested authority on preserving audio recording.

In addition, from Judge Manning's recollection, he believes Laura Young made this motion in trial which he already ruled upon.

Shelby Herbkersman
Law Clerk to the Honorable L. Casey Manning
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From: SARAH JURICK <JURICK.SARAH@richlandcountysc.gov>
Sent: Thursday, December 12, 2019 5:25 PM
To: Manning, L. Casey Law Clerk (Shelby Herbkersman) <CManningLC@sccourts.org>; APRIL SAMPSON <SAMPSON.APRIL@richlandcountysc.gov>; Vance Eaton <Eaton.Vance@richlandcountysc.gov>; STEPHANIE TAYLOR <TAYLOR.STEPHANIE@richlandcountysc.gov>; MAISIE OSTEEN <OSTEEN.MAISIE@richlandcountysc.gov>; LAURA YOUNG <YOUNG.LAURA@richlandcountysc.gov>
Subject: RE: Kenneth Gleaton Signed Order

Hi Shelby,

Respectfully, the motion was made for the first time in writing on November 12th (and not argued during the trial). Therefore, we still need a post-trial ruling for it to apply.

Thank you,

Sarah

From: Manning, L. Casey Law Clerk (Shelby Herbkersman) <CManningLC@sccourts.org>
Sent: Thursday, December 12, 2019 1:55 PM
To: SARAH JURICK <JURICK.SARAH@richlandcountysc.gov>; APRIL SAMPSON <SAMPSON.APRIL@richlandcountysc.gov>; Vance Eaton <Eaton.Vance@richlandcountysc.gov>; STEPHANIE TAYLOR <TAYLOR.STEPHANIE@richlandcountysc.gov>; MAISIE OSTEEN <OSTEEN.MAISIE@richlandcountysc.gov>; LAURA YOUNG <YOUNG.LAURA@richlandcountysc.gov>
Subject: RE: Kenneth Gleaton Signed Order

Sarah,

Judge Manning said he made a ruling about this on the bench, and therefore all motions have been ruled upon.

Shelby Herbkersman
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From: SARAH JURICK <JURICK.SARAH@richlandcountysc.gov>
Sent: Thursday, December 12, 2019 1:33 PM
To: Manning, L. Casey Law Clerk (Shelby Herbkersman) <CManningLC@sccourts.org>; APRIL SAMPSON <SAMPSON.APRIL@richlandcountysc.gov>; Vance Eaton <Eaton.Vance@richlandcountysc.gov>; STEPHANIE TAYLOR <TAYLOR.STEPHANIE@richlandcountysc.gov>; MAISIE OSTEEN <OSTEEN.MAISIE@richlandcountysc.gov>; LAURA YOUNG <YOUNG.LAURA@richlandcountysc.gov>
Subject: RE: Kenneth Gleaton Signed Order

Thank you.

We still need a ruling on the motion to preserve audio and make it part of the record. It was filed at the same time – please see attached.

Sarah Christine Jurick
Assistant Public Defender
Fifth Judicial Circuit

1701 Main Street • P.O. Box 192 (29202)
Columbia, SC 29201
p 803-765-2592, ext. 127 • f 803-748-5018
juricks@rcgov.us

From: Manning, L. Casey Law Clerk (Shelby Herbkersman) <CManningLC@sccourts.org>
Sent: Monday, December 9, 2019 1:30 PM
To: APRIL SAMPSON <SAMPSON.APRIL@richlandcountysc.gov>; Vance Eaton <Eaton.Vance@richlandcountysc.gov>; STEPHANIE TAYLOR <TAYLOR.STEPHANIE@richlandcountysc.gov>; SARAH JURICK <JURICK.SARAH@richlandcountysc.gov>; MAISIE OSTEEN <OSTEEN.MAISIE@richlandcountysc.gov>; LAURA YOUNG <YOUNG.LAURA@richlandcountysc.gov>
Subject: Kenneth Gleaton Signed Order

Hi all -

Please see the attached order.

Shelby Herbkersman
Law Clerk to the Honorable L. Casey Manning
Richland County Judicial Center
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STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)** **)** **The State of South Carolina,)** **)** **)** **vs.)** **)** **)** **Kenneth Gleaton,)** **Defendant.)**	**IN THE COURT OF GENERAL SESSIONS** **Indictment Numbers: 2018GS4001418, 2018GS4001419, 2019GS4004077, 2019GS4004079** **CERTIFICATE OF SERVICE**

I certify that the Motion to Clarify and/or Reconsider Ruling was served on Assistant Solicitor, Vance Eaton, by hand delivery to his office at 1701 Main St., Columbia, SC 29201 on Friday, December 20, 2019.

Laura Young
Attorney for Defendant

Columbia, South Carolina

This 20th day of December, 2019.

EXHIBIT F

Hudgins, Kathrine

From: Allen, Desiree <DAllen@sccourts.org>
Sent: Wednesday, October 14, 2020 5:10 PM
To: Hudgins, Kathrine; SC - LEBLANC STEVEN
Cc: Stock, Chris; White, Della
Subject: Re: [External] Re: Request for Audio Recording - State v. Kenneth Gleaton

Thank you for sending that. I'm thinking the transcript hadn't been prepared yet when I responded with that letter.

From: Hudgins, Kathrine <KHudgins@sccid.sc.gov>
Sent: Wednesday, October 14, 2020 3:50 PM
To: Allen, Desiree; LeBlanc, Steven
Cc: Stock, Chris; White, Della
Subject: RE: [External] Re: Request for Audio Recording - State v. Kenneth Gleaton

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Thank you for your response. I have attached a copy of the letter you sent to trial counsel and referenced in my previous e-mail.

Kat Hudgins

Kathrine Haggard Hudgins, Appellate Defender South Carolina Commission on Indigent Defense Appellate Division
1330 Lady St. P.O. Box 11589
Columbia, SC 29211
(803) 734-1343
Fax (803) 734-1397
khudgins@sccid.sc.gov

-----Original Message-----
From: Allen, Desiree <DAllen@sccourts.org>
Sent: Wednesday, October 14, 2020 12:27 PM
To: Hudgins, Kathrine <KHudgins@sccid.sc.gov>; SC - LEBLANC STEVEN <SLEBLANC@SCCOURTS.ORG>
Cc: Stock, Chris <cstock@sccid.sc.gov>; White, Della <dwhite@sccid.sc.gov>
Subject: [External] Re: Request for Audio Recording - State v. Kenneth Gleaton

Thank you for contacting me, Ms. Hudgins. I am happy to respond to your request so that the procedure is clarified for both the court reporter and your office staff. The letter you referred to is not attached, but I accept your recollection. Unfortunately, the five year retention period is for records that have not been transcribed. Once a transcript is prepared, the retention period is one year. I have included the language from the Court Reporter Manual below.

C. Retention of Primary and Back-up Tapes Rule 607(i), SCACR governs the retention of tapes. It provides that a court reporter shall retain the primary and back-up tapes of a proceeding that has not been transcribed for a period of at least five years after the date of the proceeding. Only after the expiration of that period may the court reporter reuse or destroy the tapes. If the proceeding was a hearing or trial which lasted for more than one day, the time shall be

computed from the last day of the hearing or trial. In any proceeding which has been transcribed, the court reporter shall retain the primary and back-up tapes which have been transcribed for a period of at least one year after the original transcript is sent to the requesting party to allow any party to challenge the accuracy of the transcription.

You don't appear to be challenging the transcript, so I haven't included that language here. However, it is available in the Court Reporter Manual, which you can find at the Judicial Branch website.

With regard to your request to listen to audio, the Court Reporter Manual does provide information on how that can be accomplished. I have included that language below.

B. Requests to Listen to Audio Recordings/Read Steno Notes Court reporters shall not grant any request to listen to audio recordings or to read steno notes unless the requestor has received written authorization from the presiding judge or, in his/her absence, the chief judge for administrative purposes in that circuit.

If this written authorization is granted, kindly send a copy of it to Mr. LeBlanc so that he may assist you further before the retention time expires. I would request that you also copy Karama Bailey, Deputy Director, my supervisor, as I anticipate that I will no longer have access to this email account after tomorrow, October 15, 2020, my official last day. Enjoy your day!

From: Hudgins, Kathrine <KHudgins@sccid.sc.gov>
Sent: Wednesday, October 14, 2020 11:39 AM
To: Allen, Desiree; LeBlanc, Steven
Cc: Stock, Chris; White, Della
Subject: Request for Audio Recording - State v. Kenneth Gleaton

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Ms. Allen:

I represent Mr. Kenneth Gleaton in the direct appeal of his conviction for murder, arson, possession of a firearm by a convicted felon and desecration of human remains. The jury trial took place from October 28, 2019 through November 1, 2019, in Richland County before the Honorable L. Casey Manning. Mr. Steven Leblanc was the court reporter. I was not present at trial. The trial transcript reflects, however, that trial counsel made a motion for a mistrial based on the Judge's "demeanor and volume and tone when ruling on defense objections." The mistrial motion can be found on page 706 of the trial transcript. The trial lawyers also filed written motions for a new trial based on these grounds. Both motions were denied. In deciding if the mistrial denial issue should be presented to the Appellate Court on direct appeal, I need to listen to the audio recording of the trial. I understand that trial counsel, Sarah Jurick with the Richland County Public Defender Office, contacted you in regard to preservation of the audio recording. In a letter from you to Ms. Jurick dated November 21, 2019, you indicated that the audio would be available for five years , pursuant to Rule 607.

On August 3, 2020, my assistant, via e-mail, requested a copy of the audio recording from Mr. LeBlanc. Mr. LeBlanc responded, via phone call and e-mail, that I needed to contact you with reference to the request for the audio recording. I decided to read the full trial transcript before contacting you about the audio recording. I have finished reading the full trial transcript and believe it is necessary for me to listen to the audio recording of the trial in order to adequately

represent Mr. Gleaton on direct appeal. Would you please let me know what steps I need to take in order to obtain a copy of the audio recording of the trial or make arrangements to listen to the audio recording?

Thank you for your help and I look forward to hearing from you.

Kathrine Haggard Hudgins, Appellate Defender

South Carolina Commission on Indigent Defense

Appellate Division

1330 Lady St. P.O. Box 11589

Columbia, SC 29211

(803) 734-1343

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khudgins@sccid.sc.gov<mailto:khudgins@sccid.sc.gov>

South Carolina Court Administration

South Carolina Supreme Court
Columbia, South Carolina

KARAMA BAILEY
DEPUTY DIRECTOR

DESIREE ALLEN
COURT REPORTER MANAGER

1220 SENATE STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-0269
EMAIL: dallen@sccourts.org

November 21, 2019

Richland County Public Defender
P.O. Box 192
1701 Main Street
Columbia, South Carolina 29202

Dear Ms. Jurick:

I received your request to preserve the audio recording of Kenneth Gleaton's trial. The audio will be available for five years, pursuant to rule 607.

If you have any further questions regarding *court reporters and/or transcripts*, please do not hesitate to contact this office again.

Respectfully,

Desiree Allen
Court Reporter Manager

Enclosure: Rule 607

RULE 607
COURT REPORTER TRANSCRIPTS AND TAPES

(a) Applicability. This rule is applicable to court reporter transcripts and tapes relating to proceedings before the family and circuit court, to include proceedings before masters-in-equity. A court reporter for such a proceeding, regardless whether the court reporter is a Judicial Department employee or a private court reporter, shall comply with the requirements of this rule.

(b) Ordering Transcripts. Transcripts of proceedings which are needed for an appeal or appellate review of a post-conviction relief action before the Supreme Court or Court of Appeals shall be ordered as provided by Rules 207(a) or 243(b), SCACR. In all other cases, the request for the transcript shall be made, in writing, to the court reporter, and a copy of the request shall be served as provided by Rule 262(b), SCACR, on all parties to the proceeding which is to be transcribed and, if the transcript is requested for use in another case, on all parties in that case. A copy of the request shall also be provided to the Office of Court Administration. If the request is made by an attorney, the attorney shall provide copies of all correspondence via electronic means as specified in Rule 207(a)(7) and by Order of the Supreme Court. The names and addresses of all persons who are to be served with a copy shall be included on the request for the transcript. The court reporter must acknowledge receipt of the request by responding to the person making the request within five business days, and provide a copy to the Office of Court Administration as specified in Rule 207(a)(7) and by Order of the Supreme Court.

(c) Preparation of Transcript. The transcript shall be prepared in the manner prescribed by the Court Reporters Manual published by the Office of Court Administration.

(d) Delivery of Transcripts. A court reporter shall transcribe and deliver the transcript no later than sixty (60) days after the date of the request. Records shall be transcribed by the court reporter in the order in which the requests for transcripts are made; provided, however, that requests to transcribe post-conviction relief proceedings challenging a sentence of death shall be given priority as provided by S.C. Code Ann. § 17-27-160(E).

(e) Extension of Time to Deliver. If a court reporter anticipates continuous engagement in the performance of other official duties which make it impossible to prepare a transcript within the time specified in (d) above, the reporter shall promptly notify the Office of Court Administration by submitting a Court-approved Notice of Request for Extension form. The Office of Court Administration may grant up to three extensions for a total of up to ninety (90)

days. Extensions in excess of ninety days (90) days shall not be allowed except by order of the Chief Justice.

(f) Notice of Extension. Upon the granting of any extension of time for delivery of the transcript, the Office of Court Administration shall notify the parties and, if the transcript has been requested for an appeal or other proceeding before the Supreme Court or the Court of Appeals, the Clerk of that Court.

(g) Failure to Receive Transcript. If the requesting party has not received the transcript within the allotted time nor received notification of an extension within ten (10) days after the allotted time, the requesting party shall notify, in writing, the Office of Court Administration, the court reporter and, if the transcript has been requested for an appeal or other proceeding before the Supreme Court or the Court of Appeals, the Clerk of that Court. If the request was made by an attorney, the attorney shall also provide notice via electronic means as provided in Rule 207(a)(7) and by Order of the Supreme Court.

(h) Fees for Transcription and Other Services.

(1) By Judicial Department Court Reporter. A court reporter shall receive the following fees:

(A) A fee of Four Dollars and Twenty-Five Cents ($4.25) per page for producing an original transcript.

(B) A fee of One Dollar ($1.00) per page for furnishing a copy of a previously prepared transcript.

(C) A fee of Two Dollars ($2.00) per page for each person receiving Real-time output when a Real-time Request is signed by the requestor.

(D) A fee of One Dollar and Fifty Cents ($1.50) per page for unedited (rough copy) ASCII Disks when no request for an original transcript has been made.

(E) A fee of Thirty-Five Dollars ($35) for edited ASCII disks. This service is only available to a requestor who has requested an original or a copy of the transcript.

(F) A fee of One Dollar and Fifty Cents ($1.50) per page for condensed transcripts, which contain no more than four pages of text. This service is only available to a requestor who has requested an original or a copy of the transcript.

(G) A fee of One Dollar ($1.00) per page for Keyword Indexing. This service is only available to a requestor who has requested an original or a copy of the transcript.

(H) A fee of Forty Dollars ($40) for e-mailed transcripts. This service is only available to a requestor who has requested an original or a copy of the transcript.

(I) A fee of Two Dollars ($2.00) per page for unedited (rough draft) e-mailed transcripts.

(J) The following per page costs apply to requests to produce a transcript on an expedited basis:

(i) A fee of Five Dollars ($5.00) for original transcripts delivered within seven days of the request and One Dollar ($1.00) for a copy.

(ii) A fee of Six Dollars ($6.00) for original transcripts delivered overnight and One Dollar and Twenty-Five Cents ($1.25) for a copy.

(iii) A fee of Seven Dollars ($7.00) for original transcripts delivered on a daily basis and One Dollar and Twenty-Five Cents ($1.25) for a copy.

(2) By Private Court Reporter. In the event the court reporter is not an employee of the Judicial Department, the fees to be charged shall be that agreed upon by the court reporter and the parties. The transcript produced by the Judicial Department court reporter is the official transcript.

(i) Retention of Tapes. Except as provided below, a court reporter shall retain the primary and backup tapes of a proceeding for a period of at least five (5) years after the date of the proceeding, and the court reporter may reuse or destroy the tapes after the expiration of that period. If the proceeding was a hearing or trial which lasted for more than one day, the time shall be computed from the last day of the hearing or trial. In any proceeding which has been transcribed on or after March 1, 2017, the court reporter shall retain the primary and backup tapes which have been transcribed for a period of at least one (1) year after the original transcript is sent to the requesting party, to allow any party to challenge the accuracy of the transcription. If no challenge is received by the court reporter within the one (1) year period, the tapes may be reused or destroyed.

(j) Failure to Comply. The willful failure of a court reporter to comply with the provisions of this Rule shall constitute contempt of court enforceable by order of the Supreme Court.

Last amended by Order dated September 26, 2018, effective October 15, 2018.

EXHIBIT G

Hudgins, Kathrine

From: Hudgins, Kathrine
Sent: Thursday, October 22, 2020 1:49 PM
To: SC - LEBLANC STEVEN; KBailey@sccourts.org
Cc: Stock, Chris; White, Della
Subject: State v. Kenneth Gleaton Audio

Dear Mr. LeBlanc – As you may recall, In August my office contacted you about obtaining the audio recording of the trial of State v. Kenneth Gleaton held in Richland County on October 23 – November 1, 2019, before the Honorable L. Casey Manning. As you instructed, I contacted Ms. Desiree Allen with Court Administration about obtaining a copy of the audio tape. Ms. Allen advised that I needed to obtain written authorization from the trial judge in order to listen to the audio. Ms. Allen also advised that the audio tape was only retained for one year. Given the time sensitive nature of the one year retention of the audio recording and the fact that trial counsel moved to preserve the audio post-trial, I plan to file with the South Carolina Court of Appeals a motion to preserve and allow me to obtain a copy of the audio recording to listen to and possibly designate as part of the record on appeal. I will also ask the Court to order that the audio recording not be destroyed until after a ruling is made. I wanted to contact you as a matter of professional courtesy and simply ask that the audio recording not be destroyed until the Court has had an opportunity to rule on my motion. I appreciate your help in this matter. If you have any questions or concerns, please do not hesitate to contact me. Thank you.

Kathrine Haggard Hudgins, Appellate Defender
South Carolina Commission on Indigent Defense
Appellate Division
1330 Lady St. P.O. Box 11589
Columbia, SC 29211
(803) 734-1343
Fax (803) 734-1397
khudgins@sccid.sc.gov

RECEIVED
Oct 28 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KENNETH RAY GLEATON,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Motion to Preserve the Audio Recording of the Trial and Allow Appellate Counsel to Obtain a Copy of the Audio in the above-referenced case has been served upon Melody J. Brown, Esquire at the primary e-mail address listed in the Attorney Information System (AIS), this 28th day of October, 2020.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT