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Jun 04 2021

SC Court of Appeals

State of South Carolina
In the South Carolina Court of Appeals

Appellate Case No. 2019-001614

The State,

Respondent,

v.

Charles Edward Mungin, III, Appellant,

Appellant.

**Petition for Extension
Initial Brief of Appellant
In Light of Missing Transcript**

The Initial Brief of Appellant in the above captioned direct appeal is due for service and filing on today's date. On May, 4, 2021, this Honorable Court granted yet another extension in this appeal until today's date. Undersigned counsel is aware that the May 4, 2021, Order indicated that there would be no further extensions in this matter and she was extremely grateful for the Court's patience in granting that extension until today.

I have spent countless hours on this appeal and much of that time I was in genuine pain. I fully intended to submit an Initial Brief on behalf of Appellant on today's date; however, I have discovered an error that I need to plead for a chance to rectify. At the time I was hired, I had the trial dates for this matter and had been told that a pre-trial motion hearing was held on August 28, 2019, before the Honorable Craig B. Brown. Counsel ordered, obtained and reviewed the transcript of that Motion Hearing months ago. In all candor with the Court, I have not been favorably impressed with the scarcity of preserved issues in this record, particularly in light of the fact that my client received a life sentence in this case in which the evidence directly implicating Appellant in this murder is equally sparse. In a last ditch effort to find a promising issue, I have reread significant portions of this record over the last few weeks. Today, I once again, reread the record from the Pretrial Motion hearing held on August 28, 2019. I was shocked to find a reference to an earlier hearing before Judge Dennis that had totally escaped my attention. *See, Pre-Trial Motions Hearing, p.32, line 24- p. 33, line 4, Attachment A, cover of*

hearing Transcript and p. 32-33 of that record.

I have not yet been able to speak with the three Defense Attorneys involved this case to determine what matters were covered during that hearing. It is my intent to order an expedited transcript of that hearing immediately as quickly as I am able to ascertain what date in July, 2019, it was held. I can't offer the Court a reason why I missed the reference to this hearing before now. The tell tale language is at the bottom of a page in the midst of the Solicitor's argument on a motion, but it is still not like me not to have caught it sooner. What I do know is that, as an officer of the court, I can not feel that I have exhausted efforts to find every issue the Client has a right for me to consider, if there is a transcript out there I have not read. I have discussed this matter with Appellant, who understands my need to read this additional record. I sincerely hope this Honorable Court will extend me this one last bit of consideration in this matter and respectfully ask that I be permitted to submit the Initial Brief of Appellant after I get the chance to obtain and review this additional record. As previously stated, I intend to order an expedited transcription of that record just as quickly as I am able to ascertain the date this hearing was held; hopefully Monday. I have served a copy of this Petition on Melody J. Brown, Senior Assistant Deputy Attorney General and trust that she will advise the Court of her position in this matter directly.

Respectfully submitted

/Tara D. Shurling

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ATTORNEY FOR PETITIONER

This 4th day of June, 2021

1 STATE OF SOUTH CAROLINA)
2) Court of General Sessions
3 COUNTY OF CHARLESTON) Case No. 2019-GS-10-04185
4) and 2019-GS-10-03722,
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B E F O R E:

THE HONORABLE CRAIG D. BROWN

A P P E A R A N C E:

STEPHANIE BIANCO LINDER and WHIT SOWARDS
Attorney for the State

BEATTIE INGLIS BUTLER and JASON TODD MIKELL
Attorney for the Defendant

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

1 There are a multitude of cases.

2 MR. BUTLER: Yes, sir. Thank you.

3 THE COURT: Any other matters? Have we addressed
4 them all? Defense Counsel?

5 MS. LINDER: Your Honor, the last of the Defense's
6 is a search warrant of the house. And that's the officer who
7 had the car incident. He is in West Ashley. He just passed
8 the Coburg Cow, my investigator told me. But I think there's
9 other issues we can bring up in the meantime.

10 THE COURT: All right.

11 MR. SOWARDS: Your Honor --

12 MR. BUTLER: You go ahead.

13 MR. SOWARDS: One of the things that we had hoped to
14 accomplish this morning, or Ms. Linder's e-mail last week,
15 was to have -- well, there are a number of surveillance
16 videos that were obtained in this case that happened in kind
17 of a quasi-residential area downtown. They collected
18 surveillance footage from 10 to 12 locations. We have some
19 of the records custodians here today. And what we had hoped
20 to accomplish was to have them testify, authenticate the
21 videos here this morning. And then during the trial, have
22 the primary detective who viewed the footage testify as to
23 its contents.

24 I think there may have been -- this is one of the
25 things we addressed with Judge Dennis back in July. It was

1 our understanding that Defense would be okay with having that
2 done today. I think that's not their position. Obviously,
3 Mr. Butler has come onboard now. He disagrees that we can
4 handle this here today.

5 THE COURT: Mr. Butler?

6 MR. BUTLER: Yes. I am admittedly a little rusty,
7 but I've never heard that it's an issue of fact as to whether
8 or not they established a chain and --

9 THE COURT: Issue of fact? I thought that was an
10 issue of law.

11 MR. BUTLER: I think that they have to establish the
12 chain of custody before the jury. If I am wrong, I am happy
13 to be wrong, and we can do it their way. But my
14 understanding is that -- I thought I used to get a jury
15 charge that said that they have to establish every link in
16 the chain before the evidence can be considered.

17 And I just don't see how we can do it. I think we
18 would be setting ourselves up for a post-conviction relief if
19 we did that, if we handled that outside the presence of the
20 jury without a jury even being selected. So we would object
21 to doing that.

22 MR. SOWARDS: If I may, Your Honor, I think that in
23 addition to having the detective testify as to the contents
24 of the video, he would also testify about where it came from,
25 which I think would satisfy the chain, because it would be

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Certificate of Service

Undersigned Counsel certifies that a true copy of her Petition for an Additional Extension of Time in which to file the Initial Brief of Appellant necessary due to the discovery of an additional transcript needed for this direct appeal, has been served up opposing counsel, Melody J. Brown, Senior Assistant Deputy Attorney General, with Attachment, this 4th day of June, 2021, by e-mailing the same to the digital address set forth below.

Melody J. Brown
Senior Assistant Deputy Attorney General
mbrown@scag.gov

s/ *Tara D. Shurling*
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