

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Beaufort County  
Honorable Carmen, Circuit Court Judge

Appellate Case No: 2011-191569

RECEIVED

APR 15 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA,

Respondent,

vs.

LISA COSACCHI,

Appellant.

**RETURN TO PETITION FOR ORDER SETTING APPELLANT'S CONVICTION  
ASIDE OR, IN THE ALTERNATIVE, RETURN TO MOTION TO RECONSTRUCT  
THE RECORD  
AND  
MOTION FOR ORDER PERMITTING TRANSCRIPTION AND PAYMENT**

Respondent, making Return to Appellant's petition for an order setting aside her convictions or, in the alternative, to reconstruct the record and moving for an order permitting transcription and payment, would show unto this Court:

1. Appellant states that she was convicted of two (2) counts of kidnapping after a trial held in Beaufort County on April 26-27, 2011, before the Honorable Carmen T. Mullen.
2. Counsel for Appellant indicates that he has been informed by Desiree Allen of South Carolina Court Administration that the court reporter for this trial, Debra Everett, is no longer employed by the judicial department and that the records Ms. Everett delivered to Court Administration do not contain the materials to produce any portion of the transcript of the trial in

this case. Counsel also indicates the trial occurred almost two years ago and lasted for two days.

3. Counsel for Appellant states that he cannot adequately address appellate issues in the absence of the trial transcript. He also asserts that an attempt to reconstruct the entire trial transcript would be futile. He states that Appellant should not be blamed or harmed by the loss of the transcript which has occurred without fault on the part of Appellant and that Appellant is entitled to a new trial. Alternatively, counsel for Appellant asks the Court to remand the matter to the Circuit Court for a hearing to reconstruct the entire transcript.

4. In response, the undersigned indicates that she has contacted the trial prosecutor who communicated with the court reporter and, on information and belief, learned that the court reporter might have additional records that would allow for the transcription of the trial transcript if she is provided permission to prepare the transcript by order of the Court and if she is permitted by order of this Court to receive compensation for the transcription. Therefore, Respondent moves herein to hold the motion of Appellant in abeyance pending a determination whether additional records to produce the trial transcript are available and for an order of this Court permitting the court reporter to prepare the transcript and to be compensated for the transcript preparation at the rate designated for court reporters employed by South Carolina Court Administration when transcript requests are made of them from State agencies or entities.

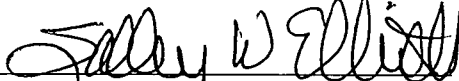
5. Alternatively, Respondent opposes Appellant's request for a new trial without the parties first attempting to reconstruct the record in this case. The prosecutor and the victims are also without fault in the loss of the transcript and would be prejudiced by the automatic grant of a new trial. The request for new trial is premature at this point without this Court, first, exploring the possibility of the transcript preparation through the original court reporter or remanding the

matter for a hearing to reconstruct the record. Hunter v. Parrott, 251 S.C. 329, 162 S.E.2d 276,  
(1968).

Respectfully submitted,

ALAN WILSON  
Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General,

By: 

Salley W. Elliott  
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ATTORNEYS FOR RESPONDENT

April 15, 2013

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Honorable Carmen, Circuit Court Judge

Appellate Case No: 2011-191569

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STATE OF SOUTH CAROLINA,

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**CERTIFICATE OF SERVICE**

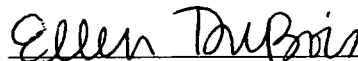
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I, Ellen DuBois, certify that I have today served the Return to Petition for Order Setting Appellant's Conviction Aside or, in the Alternative, to Reconstruct the Record and Motion for Order Permitting Transcription on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
P.O. Box 11589  
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 15<sup>th</sup> day of April, 2013.



Ellen DuBois  
Administrative Assistant  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211