

A reconstruction hearing was held on September 30, 2025, at the Horry County Courthouse before the undersigned. Appellate Defender Joanna K. Delany of the South Carolina Commission of Indigent Defense represented Appellant. Assistant Attorney General Kaylee C. Kemp of the South Carolina Attorney General's Office represented the State. Appellant called the Assistant Solicitors who prosecuted his case, Jacqueline Charbonneau and Cassie Hall, as well as Appellant's trial counsel Dayne Phillips. Appellant also offered testimony at the hearing. At the beginning of the hearing, the Court addressed Appellant's motion to relieve appellate counsel. Appellant stated that he opposed reconstructing the record, and that appellate counsel refused to file what he wanted her to file. This Court denied Appellant's motion to relieve counsel.

At the conclusion of the hearing, Appellant moved for a new trial on the grounds that the record was unable to be sufficiently reconstructed and would not permit meaningful appellate review pursuant to *State v. Ladson*, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007). Appellant noted the significant lapse of time since trial and the differing recollections of trial counsel and the solicitors from Appellant's recollection regarding the wording of the jury re-charge. The State opposed the motion and argued that the testimony presented sufficiently reconstructed the absent limited portions and further noted that there was no disagreement regarding the substance of the missing portions. This Court denied Appellant's new trial motion and ordered the State to prepare an order to reflect this Court's findings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ms. Charbonneau relied on her independent recollection as well as her review of notes taken at the time of trial in regard to the absent portions of the trial transcript. She recalled that the jury was instructed on the defense of habitation. After the jury retired to the deliberation room, they were brought back to the courtroom and given the definition of trespasser. She recalled that there were no objections as to those instructions. The jury was then instructed to begin

2023-65-02-01034

deliberations. The jury requested that the defense of habitation be read again. The Court re-read the instructions and no other jury questions arose. She did not recall that any objections were raised at that time. After approximately 2 hours, the jury returned guilty verdicts. She recalled the jurors were individually polled and the jurors affirmed their verdicts. She recalled that Appellant renewed his motions and objections and his motion for a new trial was denied. Appellant was sentenced to a total of 43 years. The jury instructions on habitation that are reflected in the transcript were labeled as Court's Exhibit 2. After reviewing Court's Exhibit 2, Ms. Charbonneau confirmed the instruction accurately reflected the initial jury charge on the law of habitation that was in the transcript and recalled that the re-charge that was read to the jury consisted of the same. She recalled that Cambian McKie, the victim's sister, was present and requested that she tell the Court that she was in agreement with the State's sentencing request. She recalled asking the Court for more than 40 years and the Court sentenced Appellant to 43 years for murder and five years concurrent for the weapons offense.

Ms. Hall agreed with Ms. Charbonneau's recollection. She confirmed that there was only one jury question and no objections followed regarding the re-charge. After reviewing Court's Exhibit 2, she confirmed that the instruction accurately reflected the initial jury charge on the law of habitation that was in the transcript and recalled that the re-charge that was read to the jury consisted of the same. She confirmed that the deliberations were not long, and Ms. Charbonneau's 2-hour estimation was accurate.

Appellant's trial counsel, Mr. Phillips, testified virtually. Mr. Phillips testified that he could not specifically recall if the jury was given a written copy of the jury charge on habitation but believed it was only administered verbally. He does not recall a discussion or any raised objections regarding the re-charge on the law of habitation. He did not recall the re-charge to be different than

2023-05-02-01034

the original charge, only that the jury was also instructed on the definition of trespasser. He testified that he does not have a specific memory of the length of jury deliberations, but that approximately 2 to 3 hours seemed accurate. He recalled that a juror was struck and that he moved for a new trial and renewed his previous motions and objections. As to sentencing mitigation, Mr. Phillips testified that he told the Court that Appellant was a business owner, was in the Army, and that he had initially cooperated with police during the investigation by giving his passcodes.

Lastly, Appellant testified that he did not believe Court's Exhibit 2 accurately reflected the re-charge instructions. He testified that the word "reasonably" was omitted in the written instructions in multiple instances but was verbally instructed to the jury. At the conclusion of the hearing, Appellant moved for new trial based on insufficiency of the reconstruction.

In South Carolina, "the inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal." *State v. Ladson*, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). "[B]efore a defendant can establish that he is entitled to a new trial on the basis of an inadequate reconstructed record, he must identify a specific appellate claim that this court would be unable to review effectively using the reconstructed record." *Id.* at 325, 644 S.E.2d at 273 (alteration in original) (quoting *Harris v. Comm'r of Corr.*, 671 A.2d 359, 363 (Conn. App. Ct. 1996)).

In *Ladson*, our Court of Appeals determined that the appellant had established prejudice and the inability to adequately reconstruct the entirety of his trial to support meaningful appellate review. A ten-month delay transpired before the court reporter notified the parties that no part of the trial was recorded, and the appellate court noted that "the fact of a missing portion of the trial transcript is usually brought to the court's attention much earlier than the year-plus delay present here." *Ladson*, 373 S.C. at 327, 644 S.E.2d at 274. Additionally, the entirety of the three-day trial

2023-65-02-01034

needed to be reconstructed and there was dispute regarding significant issues such as whether the appellant had testified at trial. *Id.* Even further, the context of the motions, the specific nature of the motions, and whether the challenged evidence was cumulative to other unchallenged evidence was all in question. *Id.*, at 326, 644 S.E.2d at 274. In Ladson's circumstance, the circuit court was left with a "bare bones summary of the evidence," requiring the circuit court to speculate. *Id.*, at 327, 644 S.E.2d at 274. Such is not the case here.

Here, the missing portions of the transcript were limited to the jury note regarding the defense of habitation, the following colloquy, the recharge on the law of habitation to the jury, the jury's verdict and sentencing. The jury note asking for a re-charge of the law of habitation is on file with the clerk of court, and there is no disagreement as to the question asked. Subsequent to the jury note, the witnesses agreed that the following colloquy did not contain objections or motions in reference to the re-charge. There is no dispute regarding the re-charge of the jury instruction itself - aside from Appellant's contention that the re-charge illustrated as Court's Exhibit 2 was not verbatim read to the jury. Lastly, there was no dispute over the verdict and sentencing. Further, the presentation of the evidence against Appellant is not within the missing portions of the record.

CONCLUSION

This Court finds that the missing portions from the transcript of record have been sufficiently reconstructed to provide for "meaningful appellate review." *See Ladson, supra.* As such this Court, **DENIES** Appellant's motion for a new trial.

IT IS SO ORDERED this 22 day of Oct, 2025.


THE HONORABLE MICHAEL G. NETTLES

2023-65-02-01034

Conway, South Carolina

Presiding Trial Judge
Second Judicial Circuit