



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332

Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1345

RECEIVED

Oct 21 2026

SC Court of Appeals

Wanda H. Carter, Chief Appellate Defender

October 21, 2026

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211  
(via email filing)

Re: The State v. David H. Massie  
Appellate Case No. 2025-000841

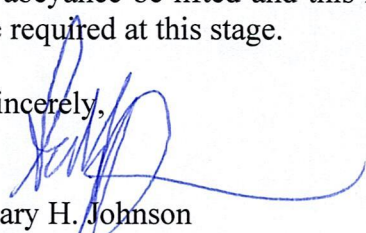
Dear Ms. Kitchings:

On May 5, 2026, this Court remanded the above-referenced case to the trial court for reconstruction of portions of appellant's trial.

On September 2, 2026, the parties convened in York County for a hearing on the matter. The transcript of the hearing was received by the office of the undersigned on or about September 28, 2026, and undersigned counsel submitted the proposed order finding the matter reconstructed to Judge Morgan on Friday, October 2, 2026. The York County Clerk of Court clocked the Order finding the matter reconstructed on October 14, 2026, which undersigned counsel received today.

Undersigned counsel requests that the abeyance be lifted and this matter returned to the briefing schedule. No additional transcripts are required at this stage.

Sincerely,

  
Gary H. Johnson  
Appellate Defender

GHJ/kpw

cc: Mark R. Farthing, Esquire  
Enclosure: Order Finding Record Reconstructed

STATE OF SOUTH CAROLINA

COUNTY OF YORK

The State of South Carolina

v.

David H. Massie,  
Defendant

FILED-RECEIVED  
2026 OCT 14 PM 3:58

ANGIE M. ROYAL  
CLERK OF COURT  
YORK COUNTY, SC

**RECEIVED**

**Oct 21 2026**

) IN THE COURT OF GENERAL SESSIONS  
) SIXTEENTH JUDICIAL CIRCUIT

) Case No. 2023-GS-46-06754  
) 2023-GS-46-06754A  
) 2023-GS-46-07176  
) 2023-GS-46-07177

**ORDER FINDING RECORD  
RECONSTRUCTED**

**SC Court of Appeals**

THIS MATTER came before the Court by order of the South Carolina Court of Appeals directing this Court to reconstruct the appellate record of the above-captioned case. This Court held an evidentiary hearing on September 2, 2026, at the York County courthouse. Defendant was represented by his appellate counsel, W. Chandler Norville, Esquire. Also present at the hearing was Defendant's trial counsel, Matthew Niemiec, Esquire, and assistant solicitors Christopher Epting and Heather Burdette.<sup>1</sup> After careful consideration, the Court finds that the reconstruction hearing provided the Court with sufficient testimony, documentation, and exhibits to reconstruct the record of the trial held before this Court on April 14-16, 2025. Accordingly, the Court finds that the record is reconstructed.

### **PROCEDURAL POSTURE**

Defendant was convicted of armed robbery, possession of a weapon during the commission of a violent crime, pointing or presenting a firearm, and resisting arrest with a deadly weapon, after a jury trial held from April 14 to 16, 2025. After he was sentenced, Defendant noted a timely appeal to the South Carolina Court of Appeals. To perfect the appeal, Defendant's appellate counsel

---

<sup>1</sup> Mr. Massie inadvertently missed his transport from SCDC and was not present at the hearing. After consulting with Mr. Massie, Mr. Norville stated that while Mr. Massie's preference was to attend the hearing, the hearing could go forward in his absence. Therefore, the hearing proceeded without Mr. Massie's presence.

requested the transcript of Defendant's trial. When the transcript was received, appellate counsel noticed several deficiencies with the transcript. Namely, that the transcript ended prior to the conclusion of the Defendant's case-in-chief, contained myriad instances of "inaudible" testimony, and did not contain notations of the timing of the jury's movements. After an unsuccessful transcript challenge, Defendant moved the Court of Appeals to remand this case for reconstruction of the record. The state did not object. On May 5, 2026, the Court of Appeals granted the motion and ordered this Court to hold a hearing to reconstruct the record.

### **RECONSTRUCTION HEARING EVIDENCE**

At the reconstruction hearing, the Court heard sworn testimony from three witnesses: trial counsel Niemiec and assistant solicitors Epting and Burdette. The Court also received as exhibits notes taken by the attorneys. Further, the Court read its own notes into the record. The Court and the attorneys that were present at the trial noted that there was no difference between their notes, and their notes matched their recollection of what occurred at the trial.

#### *The Court's Notes and Recollection*

At the outset of the hearing, the Court read its notes into the record. The Court's notes indicated that Defendant testified in his own defense at trial. Defendant testified that he did not rob the bank and that the shirt he was wearing did not match the shirt seen on the surveillance video that was taken inside the bank and that the boots he was wearing were different from the boots seen on the bank surveillance video. Defendant's testimony was that he was riding his bike in Rock Hill when an individual attempted to steal his bike. Defendant ran after the bike thief, at which time the thief dropped the bike, a bag of money, and a ski mask. Defendant picked up the money and the ski mask, believing it to be a hat. Defendant was confronted with statements that he made at a bond hearing, where he stated that he was regretful and remorseful. In response to

this confrontation, Defendant testified that he meant he regretted picking up the money, not that he regretted robbing the bank, because he did not rob the bank.

After Defendant's testimony, the Court's notes indicate that the defense rested its case. Defendant moved for a directed verdict, which was denied. The Court did not believe it had charged any lesser included offenses to the jury. The Court's notes indicated that it gave the following charges:

[T]he indictment was not evidence; the duties of the jury and the trial judge. I charged presumption of innocence; reasonable doubt charge; what is not evidence; direct and circumstantial evidence; credibility of the witnesses; expert witness; a statement of the Defendant; intent; armed robbery statute; possession of a weapon during the commission of violent crime statute; pointing and presenting firearm under the statute; resisting arrest with deadly weapon under the statute; character evidence; sympathy; and the duty to deliberate.

Reconstruction Hearing Transcript (hereinafter "Recon. Tr.") 15, ll. 7-17.

The jury left to deliberate at 2:42 p.m., and returned with a guilty verdict at 4:33 p.m. The Court sentenced Defendant to a total of seventeen years' imprisonment and was given 513 days' credit for time served.

#### *Mr. Epting's Testimony*

Mr. Epting testified at the reconstruction hearing that his recollection was that the Court's notes were accurate. Mr. Epting stated that Defendant testified that he was letting his cat use the bathroom when someone walked away with his bike. Defendant was armed with a pistol and threatened the bike thief. After this threat, the bike thief dropped what appeared to be a grocery bag, which Defendant came to discover was full of money. Defendant rode his bike away and was approached by police. Defendant testified that he did not realize they were police officers and so he retrieved his gun. Defendant adamantly denied pointing or presenting the firearm and stated

that the police did not give him sufficient time to drop his items. Mr. Epting did not recall objecting to any part of the Defendant's testimony, nor did he recall Defendant objecting to any part of the state's cross-examination.

Mr. Epting gave a closing argument where he argued about the credibility of the witnesses and the surveillance video from the bank. Mr. Epting did not recall the Defendant making any objections to his closing argument. Mr. Epting's recollection of Defendant's closing argument was that Defendant argued about the credibility of the witnesses, that the GPS tracking points were infeasible, and that Defendant had given a reasonable alternative about what happened on the date of the robbery, and therefore there was reasonable doubt. Mr. Epting did not believe any lesser-included offenses were charged to the jury.

#### *Mr. Niemiec's Testimony*

Mr. Niemiec testified that he did not object to the jury charge nor request any additional charges. Mr. Niemiec questioned Defendant from an outline of direct examination questions, which was entered at the reconstruction hearing as Court's Exhibit 2. Mr. Niemiec agreed with the recitation given by the Court and Mr. Epting. He recalled that Defendant testified that he was in the area for the Unity Bike Ride. Defendant carried his pistol with him for the protection of himself and his pet cat. Defendant tried to comply with the police and denied resisting arrest in any way. Further, when Defendant pulled out his knife during the arrest, he was not trying to use the knife to resist arrest, but rather, was attempting to disarm himself and give the knife to the police.

As to his closing argument, Mr. Niemiec testified that he touched on three prongs: (1) Defendant was not at the bank; (2) Defendant's bike was stolen; and (3) the actual bank robber dropped the money and the mask. Recon. Tr. 17, l. 21 – 18, l. 2. Mr. Niemiec also argued that the teller could not identify Defendant and that there was reasonable doubt. Mr. Niemiec's notes for

his closing argument were entered at the reconstruction hearing as Court's Exhibit 3. The Court also entered the handwritten notes of Ms. Burdette as Court's Exhibit 4.

At the close of the hearing, all parties agreed that the record could be reconstructed.

### **ANALYSIS**

For the reasons that follow, the Court finds that the evidence presented at the reconstruction hearing is sufficient to reconstruct the record of the underlying trial.

The authority to set the record for an appeal lies with the trial court. *State v. Ladson*, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). When a transcript of a trial has been lost or destroyed, an appellate court may remand the case to the trial court to have the record reconstructed. *Whitehead v. State*, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002). The record must be sufficient "to allow for 'meaningful appellate review.'" *Ladson*, 373 S.C. at 325, 644 S.E.2d at 274. "The inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal." *Id.* at 324, 644 S.E.2d at 273 (*quoting Smith v. State*, 433 A.2d 1143, 1148 (Md. 1981)). In other words, the reconstructed record need not be a carbon-copy of the original, but it must not leave the appellate courts to speculate. *Id.* at 327, 644 S.E.2d at 274 ("In short, we are left to speculate, and we decline to do so.").

The Court notes that there is no transcript for any events after the second defense witness at his trial. This means that the Defendant's testimony, the charge conference, the jury charge, the verdict, and sentencing are missing and need to be reconstructed. The Court took detailed notes of the Defendant's testimony and read them into the record. Those notes matched in substance the detailed notes taken by assistant solicitor Burdette, and the recollection of all parties present. Further, the Court finds that no substantial objections were made during the testimony of the Defendant.

As to the charge conference, the notes and recollection of the parties indicates that neither party objected to the charge or requested additional charges. Further, the Court's and Ms. Burdette's notes indicate that the Court gave a standard charge from the Circuit Court Bench Book on the following topics: the reasonable doubt standard, circumstantial and direct evidence, credibility of witnesses, expert witnesses, intent, armed robbery, possession of a weapon during the commission of a violent crime, pointing or presenting, resisting arrest with a deadly weapon, character evidence, and that the jury's verdict must not be based upon sympathy. These notes match the Court's recollection and the recollection of the parties.

As to the timing of jury movements, the Court finds that its notes demonstrate that the jury left the courtroom to deliberate at 2:42 p.m., and returned with a guilty verdict at 4:33 p.m.

As to the instances of inaudible testimony, the Court finds that the only significant portion of the transcript including inaudible testimony was during the Court's questioning of the jury panel after the Defendant's motion for mistrial. The Court finds, supported by the recollection of all parties, that Ms. Burdette's notes of the incident are accurate and fully reflect the jury's responses to the Court's questions.

Finally, as to the verdict and sentencing, the Court finds that its notes and Ms. Burdette's notes match the Court's recollection and the sentencing sheets entered at Defendant's trial.

Therefore, based upon the evidence presented at the reconstruction hearing, the Court finds that the appellate record is not so "incomplete" as to prevent "the appellate court from conducting a 'meaningful appellate review.'" *Ladson*, 373 S.C. at 325, 644 S.E.2d at 274 (*quoting In re D.W.*, 615 S.E.2d 90, 94 (N.C. Ct. App. 2005)). Accordingly, the Court finds that the record of Defendant's trial is reconstructed.

AND IT IS SO ORDERED.



Hon. G.D. Morgan, Jr.  
Circuit Court Judge

This 5<sup>th</sup> day of October, 2026  
Greenville, South Carolina