

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Clifton Newman, Circuit Court Judge

RECEIVED

JUN 17 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WILLIAM CRAIG CAUGHMAN,

APPELLANT

APPELLATE CASE NO. 2015-001867

MOTION TO HOLD APPEAL IN ABEYANCE AND
MOTION TO REMAND FOR RECONSTRUCTION OF THE RECORD

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order placing Appellant's appeal in abeyance and remanding this case to the Lexington County Court of General Sessions for a reconstruction hearing of critical portions of arguments by the defense and the State regarding the validity of a multi-jurisdictional police taskforce agreement relied upon by law enforcement when seeking a search warrant for Appellant's residence, as well as, other missing portions of Appellant's May 20-23, 2013 trial, including the closing arguments by both sides. In support of this motion, Appellant alleges the following:

- 1) Appellant was indicted by the Lexington County Grand Jury on May 6, 2013 for one count of hit and run resulting in death. Appellant's case proceeded to trial on May 20-23,

2013 before the Honorable Clifton Newman and a jury. He was found guilty as charged. Appellant was represented by Wayne Floyd.¹ Assistant Solicitors Laura S. Mayes and Robert E. McNair, III, represented the State. On May 21, 2015, Judge Newman sentenced Appellant to twenty years of imprisonment. *See Exhibit A* (Indictments and Sentencing Sheets).

2) Certified court reporter Harriet P. Bennett, who was the court reporter at trial from May 21-23, 2013, indicated on the transcript she prepared that multiple portions of the trial were “inaudible.”

3) Among the inaudible portions of the trial was an indeterminate amount of arguments by defense counsel and the prosecution regarding the validity of a multi-jurisdictional police taskforce agreement, which the police relied on for jurisdiction when seeking a search warrant of Appellant’s residence. *See Exhibit B* (Representational Sample of Missing Testimony); *see also State v. Burgess* 408 S.C. 421, 759 S.E.2d 407 (2014). Counsel for Appellant plans to raise this issue on appeal.

4) Moreover, none of the prosecutions’ or defense’s closing arguments were transcribed “due to the difficulty in hearing them.” Thus, meaningful appellate review of the prejudicial impact of any errors is, in effect, impossible. *See Exhibit C* (Representational Sample of Missing Testimony); *State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007); *Cf. Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

5) Additional missing sections of the trial transcript include portions of the trial testimony of Dr. Elizabeth Moffatt, who conducted the autopsy, and arguments on objections by defense counsel relating to Dr. Moffatt’s testimony. *See Exhibit D* (Representational Sample of

¹ Appellant initially retained Andrew Breibart. Breibart was placed on suspension prior to Appellant’s trial. *In. Re. Breibart*, 398 S.C. 123, 727 S.E.2d 470 (Mem) (2012).

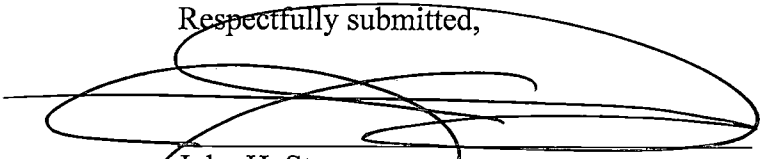
Missing Testimony). Furthermore, portions of arguments between defense counsel and the prosecutor about the correct interpretation of the hit and run resulting in death statute were inaudible. *See Exhibit E* (Representational Sample of Missing Testimony)

6) This Court has the authority to remand a case for a reconstruction hearing where a transcript has been lost or destroyed. *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002); *China v. Parrott*, 251 S.C. 329, 162 S.E.2d 276 (1968); *Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); *Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992);

7) In the present case, important portions of the trial were deemed “inaudible” by the court reporter and, thus not transcribed. A full and complete transcript of Appellant’s trial, including the missing portions from May 22-23, 2013, is necessary in the interests of due process and fundamental fairness in Appellant’s case so as to allow for meaningful appellate review of his conviction.

WHEREFORE, in order to allow meaningful appellate review, Appellant respectfully requests that this Court remand his case to the Lexington County Court of General Sessions for reconstruction of the missing portion of Appellant’s trial, and to hold the timelines in abeyance for his appeal.

Respectfully submitted,



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of June, 2016.

EXHIBIT A

WITNESSES

Cayce Department of Public Safety

Edward L. Pereira

Law Enforcement Case #: 1001243

DEM

ARREST WARRANT NUMBER

1203629

ACTION OF GRAND JURY

TRUE BILL

Ron Brasington

Foreperson of Grand Jury

Date: 5-6-13

VERDICT

GUILTY AS CHARGED

BRUCE GRAMMER

Foreperson of Petit Jury

Date: 5-23-13

DOCKET NO. 2010GS3202294

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2013

THE STATE

vs.

William Craig Caughman

CDR #: 2463

Indictment for

HIT AND RUN
ACCIDENT RESULTING IN DEATH

§ 56-05-1210(A)(3)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

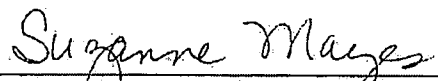
INDICTMENT FOR
HIT AND RUN
ACCIDENT INVOLVING DEATH

§ 56-05-1210(A)(3)

At a Court of General Sessions, convened on MAY 2013, the Grand Jurors of Lexington County present upon their oath:

That **William Craig Caughman** did in Lexington County, on or about February 21, 2010, being the driver of a vehicle involved in an accident resulting in injury to or the death of a person, to wit: Fredric Tobias Morriss, did unlawfully fail to immediately stop the vehicle at the scene of the accident or as close to it as possible, furthermore he did fail to return to and in every event remain at the scene of the accident until he had fulfilled the requirements of S.C. Code Section 56-5-1230, 1976, as amended, setting forth the duty to give information and render aid or reasonable assistance to any person injured in such accident, the aforesaid actions of failing to stop or comply with the requirements of law in violation of Section 56-5-1210 (A) and Section 56-5-1210(A)(3) of the Code of Laws of South Carolina (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.

William Craig Caughman

AKA:

Race: Sex: M Age: 48

DOB: 09-02-1964 SS#: 247-25-8874

Address: 1149 Gunter Cir

City, State, Zip: West Columbia, SC 29169-6218

DL#: 008304514 SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Traffic / Hit and run, duties of driver involved in accident with death

INDICTMENT/CASE#: 2010GS3202294

A/W#: 1203629

Date of Offense: 2/21/2010

S.C. Code § : 56-05-1210(A)(3)

CDR Code #: 2463

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 56-05-1210(A)(3) of the S.C. Code of Laws, bearing CDR Code # 2463

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforc. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCJA Surcharge) \$5, 3% to County (if paid in installments), TOTAL.

Clerk of Court/ Deputy Clerk Beth Carrigan
Court Reporter:
SCCA/217 (03/2011)

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge C. Newman
Judge Code: 12127
Sentence Date: May 23, 2013

EXHIBIT B

1 died. There is no chain of causation as required between
2 the accident and this man's death.

3 We asked about the toxicology reports because that
4 would show whether or not he was being given any drugs to
5 -- any drug that would have prevented such a thing from oc-
6 ccurring such as a blood thinner of some kind.

7 There was no such testimony, and the State has failed
8 to establish causation of death.

9 THE COURT: Are you saying there was simple negligence
10 or gross negligence?

11 MR. FLOYD: I would say gross negligence, Your Honor,
12 because it is such a known risk factor.

13 THE COURT: The South Carolina Code says that all per-
14 sons driving a vehicle -- a driver of vehicle involved in
15 an accident resulting in injury or death of a person must
16 stop their vehicle and -- this is South Carolina Code 6 5
17 1210.

18 It says a driver involved in an accident resulting in
19 injury to or death of a person shall immediately stop --
20 no question. That's the code. It says the driver shall
21 immediately stop when involved in an accident.

22 Now, the South Carolina Code goes to the impact on
23 the victim so it is saying in the immediate sense -- so
24 it is required that a death -- charging a person with not
25 stopping immediately, regardless of the chain of causation,

1 so I could not direct a verdict of acquittal on the charge
2 of leaving the scene of a wreck. You can see that when you
3 consider the statute.

4 The way the word immediately is used -- it says re-
5 sulting in death of a person immediately -- then it says
6 shall stop.

7 The (inaudible) Code says resulting in injury or death
8 shall immediately stop, rather than resulting in death imme-
9 diately shall stop. South Carolina says immediately shall
10 stop.

11 MR. FLOYD: We would suggest that immediately goes to
12 define injury or death of a person -- there is immediate
13 injury or death.

14 THE COURT: That would mean as long as there is indi-
15 cation a person is alive there is no indication to stop.
16 There is also mention of leaving the scene with great bod-
17 ily injury. You may have immediate injury and not have im-
18 mediate death.

19 How about it, Ms. Mayes?

20 SOL. MAYES: Yes, sir, Your Honor. The State does
21 not agree with the interpretation posed by Mr. Floyd. There
22 is absolutely nothing to suggest that that was what was in-
23 tended by the legislation.

24 The words, immediately shall stop at the scene of the
25 accident, describe the duty of the driver, regardless of

1 whether it resulted in injury or death.

2 THE COURT: If you look at the Georgia law, it is just
3 the opposite of South Carolina law, so it doesn't do any
4 good to consider that, to look at Georgia law.

5 MR. FLOYD: I think it would rise to the same inter-
6 pretation, Your Honor.

7 THE COURT: All right. Well, under a reasonable in-
8 terpretation of the statute, if the State's evidence is
9 correct, the Defendant could be found guilty of leaving
10 the scene of an accident involving injury or death.

11 It is up to the jury to determine whether or not the
12 death, Mr. Morris' death, was proximately caused by the
13 wreck as claimed by the State. They heard the pathologist.

14 It is the jury's determination to make. So, Mr. Floyd,
15 I would have to deny that motion.

16 MR. FLOYD: Thank you, Your Honor.

17 Specifically at this time we would move in behalf of
18 the Defendant to suppress all evidence seized at the De-
19 fendant's residence pursuant to the search warrant.

20 It is our position that the search warrant is invalid in
21 this case because it was issued actually in Cayce and it
22 was executed in West Columbia in Lexington County.

23 We have previously argued that motion.

24 THE COURT: Yes, sir, the Court heard argument on the
25 issue yesterday and concerning this agency agreement.

1 MR. FLOYD: We would move to suppress all of the evi-
2 dence that was obtained.

3 THE COURT: We spent a good bit of time on that issue
4 yesterday, and whether the agency agreement was signed by
5 County Council or the required officials and all of that,
6 and who had to approve the agreement.

7 The case that you had -- the issue came up in the
8 case of State versus Burgess which is a 2011 case, a Court
9 of Appeals case, and the agency agreement, so called, was
10 referenced, another Lexington case.

11 The State v. Burgess case is a multi-jurisdictional
12 drug enforcement case.

13 In this case we're talking about an agreement that
14 would pertain to traffic enforcement.

15 (Colloquy between the Court and Mr. Floyd that was not aud-
16 ible on the record)

17 THE COURT: I would deny your motion at this time. We
18 need to proceed on.

19 MR. FLOYD: Thank you, Your Honor.

20 THE COURT: All right, is there anything further, Mr.
21 Floyd?

22 MR. FLOYD: No, Your Honor.

23 THE COURT: All right. Mr. Caughman, the State at
24 this time has -- you need to be sworn.

25 (Whereupon, the Defendant, Mr. Caughman, was sworn

1 by the Clerk)

2 CLERK: Judge, I don't believe he can be heard on the
3 record.

4 What was your response?

5 DEFENDANT: Yes, maam.

6 THE COURT: The State as you heard has rested, and
7 the time has come for the Defense case. I need to explain
8 to you certain of your rights. If you do not understand
9 anything that I say or if you need me to explain anything
10 further, please let me know and I will do that.

11 We have now reached the stage of the trial where you
12 may present your defense. You have the right to claim the
13 protection given to you by the Fifth Amendment of the Con-
14 stitution of the United States.

15 This Amendment states in part that no person shall
16 be compelled in any criminal case to be a witness against
17 himself. This means you cannot be required to testify in
18 this case.

19 You have the right to testify in your own behalf if
20 you want to, but whether or not you choose to testify is a
21 personal right. No one can waive this right except you.

22 If you decide to testify you will be subject to the
23 same rules as govern other witnesses. You can be examined
24 and cross examined on any relevant issue in this case.

25 In addition, if you have a conviction that involves

1 dishonesty or false statements or crimes punishable by im-
2 prisonment for more than one year and I determine the pro-
3 bative value of the testimony outweighs the prejudicial ef-
4 fect to you, the Solicitor can question you as to your re-
5 cord as it may attack your credibility.

6 If you desire to testify, it must be a free, voluntary
7 and intelligent decision, made by you, considering the pro-
8 tections given to you by the Fifth Amendment as well as
9 the consequences of your decision.

10 If you decide not to testify, I would instruct the
11 jurors that they cannot give the fact that you did not tes-
12 tify any consideration whatsoever, and that there is to be
13 absolutely no prejudice to you that you did not testify.
14 They cannot even talk about the fact that you did not tes-
15 tify.

16 This must be a decision made solely by you. You can
17 talk with your lawyer, your family, friends or anyone else
18 you would like to, but the final decision will be left en-
19 tirely up to you as to whether or not you testify.

20 Do you understand what I've explained to you?

21 DEFENDANT: Yes, sir.

22 THE COURT: Do you have any questions regarding any-
23 thing I've told you?

24 DEFENDANT: No.

25 THE COURT: Have you talked with Mr. Floyd about whether

EXHIBIT C

1 my initial proposal -- there was mention yesterday on the
2 offense of great bodily injury. I have submitted a pro-
3 posed charge in my initial proposal that is directly from
4 the statute, subsection C of 56-5-110, a definition of great
5 bodily injury.

6 THE COURT: I believe that is covered in my charge.
7 Just a minute.

8 Great bodily injury mens bodily injury which would
9 cause a substantial risk of death or which causes serious
10 permanent disfigurement or extended loss or impairment of
11 function of any bodily member or organ.

12 SOL. MAYES: And then a charge on proximate cause.

13 THE COURT: Proximate cause would be the direct cause,
14 immediate cause, efficient cause. I have covered that.

15 It is the cause without which the death or serious in-
16 jury would not have occurred.

17 Well, from my charge, the State must prove that the
18 accident in question was the proximate cause of the great
19 bodily injury to or death of the victim.

20 Direct cause, immediate cause, efficient cause, that
21 cause without which the injury to or death of the victim
22 would not have resulted. Not the sole cause but contributing--
23 Must be a chain of causation and so forth. May be more
24 than one cause. Can be more than one proximate cause. Con-
25 tributing cause.

1 That's a pretty standard charge.

2 SOL. MAYES: And is the Court going to let the jury
3 hear the obstruction of justice charge?

4 THE COURT: The charge is long enough. That is too
5 long and not a charge the Defendant is facing. It is
6 not a part of the charge.

7 (Brief recess taken by the Court)

8 THE COURT: Thank you. Be seated.

9 THE COURT: As I said, I am granting a motion as to
10 the obstruction of justice charge.

11 SOL. MAYES: Your Honor, are you going to discuss it
12 with the jury in any manner?

13 THE COURT: I will tell them we are proceeding on the
14 hit and run accident. Do you want me to tell them that?

15 SOL. MAYES: Well, I just wasn't sure how to proceed
16 or whether to cover that.

17 THE COURT: Okay, bring the jury.

18 (Jury brought to Courtroom)

19 THE COURT: Welcome back, ladies and gentlemen, mem-
20 bers of the jury.

21 You will now hear the closing statements from the
22 State and Defendant.

23 (Closing statements to the jury were not transcribed
24 due to difficulty in hearing them. There were no objec-
25 tions made during these statements.)

EXHIBIT D

E. MOFFATT ON DIRECT

1 SOL. MAYES: Your Honor, I asked the Doctor whether or
2 not he was still a patient at the Lexington Medical Center
3 when he passed away.

4 THE COURT: Do you want to be heard? I would overrule
5 the objection.

6 MR. FLOYD: Thank you, Your Honor. Your Honor, I had
7 advised the Court that we had an issue with the pathologist
8 report.

9 THE COURT: Yes, sir.

10 MR. FLOYD: I'm going to object, first of all, as it
11 is my understanding that Dr. Moffatt did not provide any of
12 the treatment to the victim or decedent, except for doing
13 the autopsy.

14 Since she did not provide any treatment, I think any
15 judgment or finding as to injuries, treatment received, or
16 anything concerning the hospital would be hearsay and inad-
17 missible.

18 THE COURT: All right.

19 MR. FLOYD: Your Honor, unless there is something the
20 Doctor did as far as treatment that is shown in the hos-
21 pital records her testimony would be hearsay. Anything else
22 would be hearsay, and that is my concern here.

23 (Portion inaudible)

24 SOL. MAYES: Your Honor, we are not offering any evi-
25 dence other than what she found at autopsy and what is in

E. MOFFATT ON DIRECT

1 the autopsy report, which has been provided to Defense Coun-
2 sel.

3 I would like to proffer at this time the basis for
4 that.

5 THE COURT: Very well.

6 QUESTIONS OF WITNESS IN CAMERA

7 BY SOL. MAYES:

8 Q. Dr. Moffatt, can you tell us whether or not in your
9 actual autopsy report whether it is common or uncommon to
10 obtain information of where someone expired?

11 A. Common.

12 Q. The place or location where someone expired?

13 A. Common.

14 Q. All right, and is that imput to you an important fact?

15 A. Yes.

16 Q. Now, the history you rely upon to obtain that informa-
17 tion, can you tell us whether or not that is reasonably re-
18 lied upon for other experts in pathology in conducting autop-
19 sies?

20 A. Yes.

21 Q. And specifically can you tell us whether or not it is
22 relevant to learn the immediate medical history of the de-
23 cedent?

24 A. Yes, it is relevant.

25 Q. And if someone is actually a patient at that medical

E. MOFFATT IN CAMERA

1 facility at the point in which they expired, can you tell
2 us whether or not it is common or uncommon to use records
3 that pertain to their hospitalization?

4 A. Common.

5 Q. Can you tell us whether or not that relates to the
6 initial in-patient diagnosis?

7 A. Yes, it is related if it is available at the time of
8 the autopsy.

9 Q. All right, and information that you are mentioning now,
10 can you tell us whether or not you rely upon some of that
11 information and ultimately can lead to your opinion?

12 A. I would have, yes.

13 Q. And can you tell us whether or not that kind of infor-
14 mation would be relied upon by pathologists in performing
15 autopsies?

16 A. Yes, it is.

17 Q. In this case, were you able to actually observe poten-
18 tial injuries yourself?

19 A. I was.

20 Q. And does that include external and internal injuries?

21 A. Mostly internally.

22 Q. All right, and in terms of what you could see during
23 the autopsy, were you actually able to see physical injur-
24 ies externally on the victim?

25 A. He did have some very soft castments where he had

E. MOFFATT IN CAMERA

1 had surgery.

2 Q. All right.

3 A. Underneath that was an incision where he had the sur-
4 gery.

5 Q. Okay. So when a pathologist is doing an autopsy on
6 someone with a cast or are wearing a cast, for example,
7 can you tell us whether or not you would reasonably use a
8 medical record that led up to the autopsy?

9 A. Yes.

10 Q. And how would that be helpful?

11 A. You would need to know why he had a cast and what kind
12 of surgery was performed.

13 Q. All right, and is that -- can you tell us whether or
14 not that you would review medical records?

15 A. Yes.

16 Q. As they pertained to that injury or the surgery that
17 you were observing at autopsy?

18 A. Yes.

19 Q. Can you tell us whether or not in that situation that
20 would be relevant to your ultimate determination of cause
21 of death?

22 A. Yes.

23 Q. Can you tell us whether or not it would be relevant to
24 any opinion you may have from your own observation of
25 internal injuries?

E. MOFFATT IN CAMERA

1 A. Yes.

2 Q. And, finally, can you tell us whether or not that type
3 of information is reasonably relied upon by other patholo-
4 gists in conducting their own autopsies?

5 A. Yes, it is.

6 SOL. MAYES: Your Honor, at this time the State's posi-
7 tion is that . . .

8 THE COURT: Before you state your position, let me ask
9 Mr. Floyd if he wishes to ask any questions.

10 CROSS EXAMINATION OUT OF THE PRESENCE OF THE JURY

11 BY MR. FLOYD:

12 Q. Dr. Moffatt, the information that you obtained from
13 the Lexington Medical Center records, did they assist you
14 in arriving at your decision when you did your autopsy?

15 A. As necessary.

16 Q. As necessary, and it is a part of the procedure, was
17 it not?

18 A. Yes, sir.

19 Q. And do you believe without those records, your autopsy
20 results would be incomplete?

21 A. It would depend on the autopsy.

22 Q. Were they a crucial and integral part of this particu-
23 lar autopsy?

24 A. In terms of the final findings, yes, they were.

25 Q. Without those records, would you have been able to

E. MOFFATT IN CAMERA

1 make your final findings?

2 A. I would still reach the same conclusion, in terms of
3 the diagnosis.

4 Q. Did you have any concern about them?

5 A. Yes.

6 Q. But were the records necessary to your making your
7 opinion in this case?

8 A. They are necessary because they are there and they are
9 available. It would be malpractice to not review them.

10 MR. FLOYD: No further questions, Your Honor.

11 THE COURT: You may state your position at
12 this time.

13 SOL. MAYES: Yes, sir, Your Honor. The State's posi-
14 tion, Your Honor, in this regard is consistent with her --
15 her testimony is consistent in regard to her autopsy report
16 of medical findings as supported by Rule 703, which allows
17 for an expert to make reference to any information that she
18 had reasonably relied upon as other input and in reaching
19 informed opinion.

20 In this case, that would be her ultimate opinion not
21 only as to the cause of death but medical findings in gen-
22 eral.

23 THE COURT: All right.

24 MR. FLOYD: But that isn't the question here, as what
25 they are trying to do is get into evidence information of

E. MOFFATT IN CAMERA

1 medical records that do not provide any sort of connection
2 with the represented cause of death.

3 We would ask Your Honor to rule that the records pro-
4 vided her did not assist her in her findings.

5 THE COURT: This is a general Rule Five issue.

6 The issue is that under Rule Five she is entitled to
7 any information that she relied upon in forming her expert
8 opinion.

9 MR. FLOYD: I would say it's a little broader. The
10 fact is that they intend to produce this evidence through
11 this witness and this witness is going to be referring to
12 these records in her testimony.

13 Her testimony is that her conclusion would have been
14 the same without the medical records, so she did not rely
15 upon them. Since they did not provide information she re-
16 lied upon, we would ask for sanctions under Rule Five C two
17 which would prohibit the State from using the information
18 at the trial.

19 The issue here is whether the Defendant left the scene
20 of the accident and caused the death of the victim, and it
21 is our position that the State has to prove cause of death
22 in a manner that would satisfy the case authorities as to
23 the nexus between the leaving of the scene and the death.

24 She didn't treat the patient . .

25 THE COURT: You have mentioned Rule Five and mentioned

E. MOFFATT IN CAMERA

1 hearsay. An expert can rely upon hearsay in forming an ex-
2 pert opinion. The Rule Five issue deals with whether the
3 statute requires the State to provide the defense with re-
4 cords that they are going to use with an expert reviewing
5 medical records; that that must be provided to you, the med-
6 ical records.

7 The State says, well, we provided the autopsy report
8 which gives the witness' findings, and that satisfies Rule
9 Five. The autopsy report gives the witness' findings and
10 opinions.

11 Outside of this position, I don't find the State is
12 required to provide or produce every record that formed the
13 basis of the party's opinion generally, since the autopsy
14 report was provided to the defense. The autopsy report pro-
15 vided her findings and conclusions.

16 Had the Defendant attempted to provide some independent
17 autopsy proceeding which alluded to the medical records of
18 the deceased, then they would have been provided to the De-
19 fendant.

20 I don't think that that constitutes a Rule Five viola-
21 tion.

22 I will allow the question.

23 SOL. MAYES: Thank you, Your Honor.

24 THE COURT: Are you ready for the jury?

25 SOL. MAYES: We are, Your Honor.

1 THE COURT: Bring them out.

2 (Jury returned to Courtroom)

3 THE COURT: You may proceed.

4 DIRECT EXAMINATION CONTINUED

5 BY SOL. MAYES:

6 Q. Dr. Moffatt, I believe before the break we had spoken
7 about the death of the victim. Can you share that date with
8 us?

9 A. Yes, he expired on the 28th of February of 2010.

10 Q. And can you tell us whether or not he had been released
11 from Lexington Medical Center or was he still a patient at
12 Lexington Medical Center when he expired?

13 A. He had not been released.

14 Q. All right. Now, tell us a little bit about the process
15 of an autopsy?

16 A. We perform it in the morgue always on the campus of
17 the Lexington Medical Center. We conduct an external exam-
18 ination and we are assisted by one or two physician assist-
19 ants who are also trained in this area. They are not doc-
20 tors but they are PAs trained in the area of autopsy path-
21 ology.

22 We conduct an external examination. We make sure we
23 have the identification correct by whatever means we have.
24 You know, if they are in a body bag from the coroner or hos-
25 pital van.

DR. MOFFATT ON DIRECT

1 We do document any external injuries and physical ap-
2 pearance, and then we do an examination of the internal or-
3 gans.

4 Q. What can you tell us about the age of the patient?

5 A. He was thirty-six.

6 Q. All right. So this was a 36 year old patient who had
7 expired on Febuary 28th of 2010, and the autopsy was con-
8 ducted on March first. Is that correct?

9 A. Yes.

10 Q. And it was conducted on the campus of the Lexington
11 Medical Center?

12 A. Yes.

13 Q. Now, you mentioned an external examination. How do
14 you go about making observations that seem out of the ordi-
15 nary on the patient at the time?

16 A. The only really significant thing was that he had a
17 soft cast on his left wrist.

18 Q. All right. Now, when you are doing an autopsy, can
19 you tell us whether or not it is necessary or relevant to
20 review available medical records from the hospital?

21 A. Yes.

22 Q. And did you in this case review the medical records
23 as to the nature of the cast?

24 A. Yes, it was routine.

25 Q. And were you able to review that information in this

DR. MOFFATT ON DIRECT

1 particular case and rely upon this information?

2 A. Yes.

3 Q. And as far as the internal examination, can you break
4 that down for us?

5 A. There are two or three standard methods of proceeding
6 through the examination of the organs. Most pathologists
7 do things in a fairly similar fashion; that is, an examina-
8 tion of the chest first as those are the most vital organs,
9 and most causes of death will be centered in the heart or
10 the lungs or the chest.

11 I essentially do full post-mortem examinations on all
12 autopsies, and so that includes the chest. You remove the
13 chest organs first, and then you remove the abdominal organs,
14 and then you proceed to the head and remove the brain.

15 Q. And ultimately can you tell us whether or not there was
16 evidence of trauma to the patient?

17 A. Yes.

18 Q. And specifically in the internal trauma, what is meant
19 by the term blunt force trauma?

20 A. Blunt force trauma refers to force by a blunt object
21 as opposed to a sharp penetrating object, such as a knife.

22 Q. And what are examples of the mechanism that may pro-
23 duce blunt force trauma?

24 A. Certainly motor vehicle accidents are an example of
25 blunt force trauma, where somebody is -- where a blunt object

DR. MOFFATT ON DIRECT

1 is hitting a victim, and it can also be the intentional
2 force with a deadly weapon that is blunt.

3 Q. And specifically in terms of Toby Morris, were you
4 able to identify or make a post-mortem autopsy finding that
5 was consistent with trauma?

6 A. Yes.

7 Q. What were those findings?

8 A. He had bilateral rib fractures. He had pulmonary con-
9 tusions, and those were actually beginning to heal.

10 Then he had the left wrist fracture. Those were the
11 main ones in my examination, and he also had hematomas or
12 basically a soft tissue bruise or blood clot in the area of
13 the adrenal glands or one of the adrenal glands, and then the
14 soft tissue around the pancreas in the fatty tissue there.

15 There was some old sort of organizing healing that is
16 also consistent with blunt trauma.

17 Q. Can you tell us whether or not those injuries were con-
18 sistent with what trauma can occur as a result of a motor
19 vehicle accident?

20 A. Yes.

21 Q. Now, in addition to the rib fractures and the fracture
22 or broken wrist, can you tell us whether or not there was
23 any type of spinal bruising that had occurred?

24 A. He did. He had thoracic vertebral fractures in the
25 spinal column in the thoracic vertebra and apparently he had

E. MOFFATT ON DIRECT

1 a fracture of the area where the base of the skull rests
2 upon the first vertebra. That is the underside of the skull,
3 and that was seen in imaging studies that were done after
4 his accident.

5 I wasn't able to see that because I didn't remove the
6 skull or the face to see that. That was right around the
7 first vertebra.

8 Q. Can you tell us whether or not that constellation of
9 injuries would cause a patient to be immobile or partially
10 immobile while being treated for those injuries?

11 A. Yes, that would be true.

12 Q. Let me show you a diagram here, and if you -- if you
13 would step down a moment.

14 You may refer to your notes if you wish to, and let me
15 start by asking you about the rib fractures that you have
16 mentioned, and I would ask you to show us, using this diagram,
17 what area of the body you saw those rib fractures?

18 A. In this area here, he had rib fractures (portion in-
19 audible) bilaterally.

20 Q. I need you to speak up.

21 A. Rib fractures in both areas here. Repairs to the wrist.

22 Q. If you could, speak up loudly enough that the Court Re-
23 porter can hear.

24 You mentioned repair to the wrist. Can you tell us
25 whether or not that was following surgery?

E. MOFFATT ON DIRECT

1 A. Yes.

2 Q. And can you tell us whether or not that treatment fol-
3 lowed after the patient was admitted to the hospital on Feb-
4 ruary 21st?

5 A. Yes, would have.

6 Q. Now, in addition to the rib fractures and the surgery
7 on the left wrist, what other injuries did you observe?

8 A. (Inaudible)

9 THE COURT: I can't hear you. You need to talk up.

10 A. He had a fracture of on the base of his skull at the
11 point of the first vertebra or the base of the skull that im-
12 pacts with that vertebra.

13 BY SOL. MAYES:

14 Q. You also mentioned pulmonary contusions, and show us
15 on the chart where he had pulmonary contusions?

16 A. An area of bruises on the side of the chest here, or
17 of the lung.

18 Q. Can you tell us whether or not bruises of the lungs
19 are consistent with the type of trauma that would cause a
20 rib fracture?

21 A. Yes, they are.

22 Q. Can you tell us whether or not that is consistent with
23 blunt force trauma such as sustained in a motor vehicle ac-
24 cident?

25 A. Yes, it would be consistent.

E. MOFFATT ON DIRECT

- 1 THE COURT: I can't hear her.
- 2 A. It would be consistent with the motor vehicle accident
3 such as in this case.
- 4 BY SOL. MAYES:
- 5 Q. All right.
- 6 A. This is the area of the contusion (portion inaudible).
- 7 Q. Now, you also mentioned a hematoma to the adrenal
8 glands, and when you say hematoma what are you referring
9 to?
- 10 A. A soft tissue bruise or blood clot.
- 11 Q. Where are the adrenal glands located?
- 12 A. (Inaudible portion)
- 13 Q. Dr. Moffatt, what, if anything, was determined to be
14 the ultimate cause of death?
- 15 A. A pulmonary embolus was the cause of death.
- 16 Q. Now, in determining cause of death, is that a routine
17 procedure for a pathologist in conducting an autopsy?
- 18 A. Yes.
- 19 Q. And is that a part the reason for an autopsy?
- 20 A. Yes.
- 21 Q. So in describing a pulmonary embolus or embolism, what
22 is that in reference to the body?
- 23 A. It is a blood clot that is traveling through the blood
24 stream, and it is as a result of -- it started out as a
25 blood clot that is attached to the blood and then it breaks

EXHIBIT E

1 I think the evidence is clear that the victim did be-
2 gin to make a recovery until what happened that caused his
3 death.

4 All right. What says the State?

5 SOL. MAYES: Your Honor, on that portion of the stat-
6 ute that says the Defendant would have a duty to stop and
7 render aid and give information. The initial duty was not
8 to leave the scene after the impact.

9 It is possible the victim would not have died except
10 for the failure of that person to render aid. The Defen-
11 dant did leave the scene and the victim ultimately died at
12 the hospital after receiving initial treatment.

13 Our position is that the initial portion cannot set
14 up -- it is not relevant to what we have.

15 (Brief pause in the proceeding)

16 THE COURT: All right, the failure to stop and render
17 aid would benefit the person injured. Giving assistance --
18 the statute does not impose any duty but just gives the
19 -- does not impose any duty of proof but just gives the
20 stages, to stop and render aid.

21 The statutes says the driver has a duty to give the
22 information stated to the person injured and to render
23 assistance, including seeing the person is taken to a hos-
24 pital or arrange for treatment.

25 The statute is clear in its wording, duty to stop

1. and to render aid and so forth, as is stated therein.
2 I think the statute speaks for itself and so I'm going to
3 leave it in as it is stated with the requirements.

4 MR. FLOYD: Thank you, Your Honor.

5 THE COURT: As to number two, go ahead.

6 MR. FLOYD: Your Honor, number two we think is not
7 the wording of the statute. (Portion inaudible)

8 THE COURT: How about that, Ms. Mayes?

9 SOL. MAYES: Yes, sir, Your Honor. Again, I do not
10 believe the interpretation of the word immediately. It is
11 the State's position that it means the driver shall imme-
12 diately stop, speaking of the duty of the driver to stop,
13 rather than immediate death of the victim.

14 Beyond that, we believe the wording in the statute is
15 clear. Mr. Floyd would give a wrong application to the
16 wording.

17 MR. FLOYD: The statute speaks for itself.

18 THE COURT: All right.

19 (Brief pause in the proceeding)

20 THE COURT: I will give the statute as it exists, and
21 it is up to the jury to determine whether or not death or
22 serious bodily injury occurred as result of the accident.

23 (Whereupon, the disc ended for the day, and the case
24 resumed on May 23, 2013)

25 THE COURT: Good morning.

1 SOLICITOR MAYES: I have this ready as a redaction
2 of that other document.

3 THE COURT: Okay.

4 SOLICITOR MAYES: What we did is we leave the pages
5 that deal with the certification and the name, the ad-
6 dress and account number, and the transactions would
7 be substituted for the page.

8 THE COURT: All right.

9 (Brief pause)

10 (Colloquy between counsel and the Court off the
11 record)

12 THE COURT: Again, good morning.

13 There are a couple of things I understand we need
14 to take up.

15 SOLICITOR MAYES: Yes, sir. An exhibit was testi-
16 fied to on the stand by Detective Pereira, and it is
17 now with the Court Reporter.

18 The other item that we had addressed at the bench
19 this morning -- when we approached the bench the agree-
20 ment was the document would go into evidence subject to
21 later redaction.

22 We have now agreed upon a redacted page, which does
23 show the transaction in question on that particular day,
24 and we are going to pull out the other pages that are
25 dealing with other transactions and substitute that

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from Lexington County

JUN 17 2016

Honorable Clifton Newman, Circuit Court Judge

CC Court of Appeals

WILLIAM CRAIG CAUGHMAN,

PETITIONER,

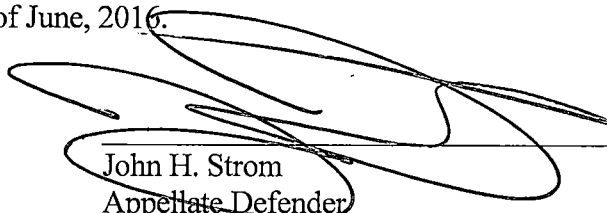
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.


CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion to Reconstruct the Record and Hold Appeal in Abeyance in the above referenced case has been served upon opposing counsel, J. Benjamin Aplin, Esquire and William Craig Caughman, #355503 at Broad River Correctional Institution this 17th day of June, 2016.


John H. Strom
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 17th day of June, 2016.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

D. ...

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) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

June 17, 2016

RECEIVED

JUN 17 2016

SC Court of Appeals

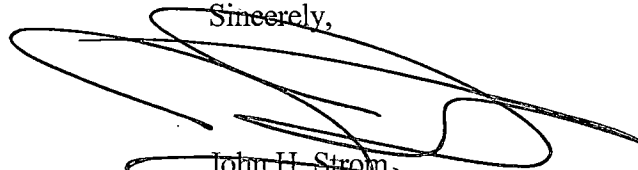
The Honorable Jenny Kitchings
Clerk, S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: The State v. William Craig Caughman

Dear Mr. Shearouse:

Enclosed are an original and six copies of the Motion to Reconstruct the Record and Hold Appeal in Abeyance in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,



John H. Strom
Appellate Defender

JHS/css

Enclosure

cc: J. Benjamin Aplin, Esquire
Mr. William Craig Caughman