

STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM LEXINGTON COUNTY
Clifton Newman, Circuit Court Judge

RECEIVED

Appellate Case No. 2015-001867

JUL 12 2016

SC Court of Appeals

THE STATE,

Respondent,

v.

WILLIAM CRAIG CAUGHMAN,

Appellant.

**RETURN TO MOTION TO REMAND FOR
RECONSTRUCTION OF THE RECORD**

Respondent (the State), through undersigned counsel and making return to Appellant's "Motion to Hold Appeal in Abeyance and Motion to Remand for Reconstruction of the Record," would respectfully show unto this Court:

1. Appellant was convicted in Lexington County of hit and run resulting in death after a jury trial held before the Honorable Clifton Newman on May 20-23, 2013. Appellant was sentenced to twenty (20) years' imprisonment. (Appellant's Exhibit A).
2. Appellant timely filed and served notice of appeal and is currently represented by Assistant Appellate Defender John H. Strom of the South Carolina Office of Appellate Defense.
3. On June 17, 2016, Appellant filed a "Motion to Remand for Reconstruction of the Record" which is the subject of this return. Attached to the motion, Appellant submitted five Exhibits, labeled A, B, C, D, & E, which consist of the indictment and sentencing sheet

(Appellant's Exhibit A), and several multi-page portions of the trial transcript which was prepared by certified court reporter Harriet P. Bennett (Appellant's Exhibits B to E).

4. In his motion, Appellant identifies four "missing" portions of the trial transcript which were not transcribed because, as indicated by the court reporter, they were inaudible. He argues these un-transcribed portions of the trial are critical, and that a full and complete transcript is necessary in the interests of due process and fundamental fairness so as to allow for meaningful appellate review. The State disagrees and will address each of the four un-transcribed portions of the proceedings below.

5. First, Appellant complains that the transcript omits "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." He contends he plans to raise this issue on appeal.

A review of pages 271 to 276 of the transcript does reveal that immediately prior to the trial court denying Appellant's motion to suppress, a "[c]olloquy between the Court and Mr. Floyd that was not audible" was not transcribed. However, prior to this colloquy, Mr. Floyd noted: "We have previously argued that motion." The trial judge agreed stating: "Yes, sir, the Court heard argument on the issue yesterday concerning this agency agreement" and "We spent a good bit of time on that issue yesterday, and whether the agency agreement was signed by County Council or the required officials and all of that, and who had to approve the agreement." (Appellant's Exhibit B, Tr.p.273-p.274). Thus, even if the colloquy was a continuation of Appellant's previously presented argument, the State submits the apparently lengthy argument from the preceding day coupled with the brief re-statement of that argument before the inaudible colloquy occurred; provide more than a sufficient record for appellate review.

6. Second, Appellant notes that "none of the prosecution's or defense's closing arguments

were transcribed” and that as a result, “meaningful appellate review of the prejudicial impact of any errors is, in effect, impossible.” Yet, in noting closing arguments were not transcribed, the court reporter also notes “[t]here were no objections made during these statements.” (Appellant’s Exhibit C, Tr.p.292). Where no objections were made by Appellant to the solicitor’s closing argument, there can be no issue preserved for appellate review.

7. Third, Appellant asserts: “Additional missing sections of the trial transcript include portions of the trial testimony of Dr. Elizabeth Moffatt.” However, a review of pages 196 to 210 of the transcript demonstrate that each instance where Dr. Moffatt’s testimony was inaudible, either the solicitor or the trial judge asked her to speak up and repeat her testimony (Appellant’s Exhibit D, Tr.p.208-p.209), or the particular answer was not germane to any possible issue on appeal (Appellant’s Exhibit D, Tr.p.210) (explaining the location of a person’s adrenal glands). Thus, the inaudible portions of Dr. Moffatt’s testimony would not impact Appellant’s ability to seek meaningful appellate review.

8. Fourth, Appellant states that “portions of arguments between defense counsel and the prosecutor about the correct interpretation of the hit and run resulting in death statute were inaudible.” However, a review of pages 281 to 283 of the transcript reveals the only portion inaudible is Mr. Floyd’s explanation for his assertion that: “number two we think is not the wording of the statute.” Immediately after the inaudible portion, the solicitor specifically identified the challenged wording in her response, by stating: “I do not believe the interpretation of the word immediately. It is the State’s position that it means the driver shall immediately stop, speaking of the duty of the driver to stop, rather than immediate death of the victim. Beyond that, we believe the wording in the statute is clear. Mr. Floyd would give a wrong application of the wording.” The State submits the statute itself, coupled with the solicitor’s response, provide more than sufficient clarity to understand Appellant’s argument at trial and whether he wishes to pursue

that argument to enable this Court to conduct a meaningful appellate review.

WHEREFORE, having made Return, and for all of the reasons stated above, the State opposes Appellant's motion to remand for reconstruction of the record. The transcript provided by the court reporter in this matter is sufficient to allow for meaningful appellate review, and thereby fully protects Appellant's rights to due process and fundamental fairness. The State has no objection to Appellant's motion to hold the appeal in abeyance pending resolution of his motion to remand.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

BY: 

J. Benjamin Aplin
S.C. Bar No: 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 12, 2016

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Motion to Remand for Reconstruction of the Record on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to John H. Strom, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

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

This 12th day of July, 2016.



ANGELA BENNETT
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

July 12, 2016

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. William Craig Caughman
Appellate Case No. 2015-001867

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of the Respondent's Return to Motion to Remand for Reconstruction of the Record in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General

Enclosures

cc: John H. Strom, Esquire
Victim Services