

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Robin Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRY EDWARD MCCALL,

APPELLANT

APPELLATE CASE NO. 2015-001097

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 Greenville County Court of General Sessions to reconstruct the missing testimony of multiple witnesses. In support of this motion, Appellant alleges the following:

1) Appellant was indicted by the Greenville County Grand Jury on December 21, 2012 on one count of felony DUI resulting in great bodily injury. Appellant proceeded to trial on May 12-14, 2015 before the Honorable Robin B. Stilwell and a jury. Jake Erwin and Randy Chambers represented Appellant. Assistant Solicitors Sara Lee Drawdy and Stan Overby represented the State. Carolina Hiskell was the court reporter. Appellant was found guilty as charged. Judge Stilwell sentence Appellant to fifteen years imprisonment.

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SEP 29 2016  
SC Court of Appeals

2) Appellant filed a timely notice of appeal and was approved for representation by the Office of Appellate Defense. It took over a year for a partial trial transcript to be produced. On July 5, 2016, the Office of Appellate Defense received an unsigned facsimile from Court Reporter Hiskell stating that her records for several cases, including Appellant's case, were stolen. As a result, "certain portions" of Appellant's transcript were not available. *See Exhibit A (Court Reporter Correspondence)*.

3) The entire testimony of three witnesses is missing: Chris Stach, Teresa Davis Dewise, and Josh Robinson. These witnesses appear to have testified for a substantial amount of time. Without their testimony, the transcript for day two of Appellant's trial is only one hundred forty pages. Counsel believes that the testimony of these witnesses is material to Appellant's case and necessary for meaningful appellate review. *See Exhibit B (Transcript Page 207 listing missing testimony)*.

4) More problematically, an unknown, but likely substantial, portion of MAIT Team Leader Corporal Tommy Brooks' testimony is missing due to "technical difficulties" experienced by Court Reporter Hiskell. Brooks was the State's accident reconstructionist. Only twenty-four pages of his testimony were transcribed, accounting for just a portion of the State's direct examination. There is no record of his cross-examination or of any re-direct or re-cross examination. *See Exhibit C (Incomplete Transcript of Corporal Brooks' testimony)*.

5) Finally, an indeterminate amount of additional testimony and legal arguments by the trial attorneys are missing from the transcript, also due to technical difficulties. The missing testimony begins midway through Dr. Tracey Lance's testimony. Dr. Lance was the emergency room doctor who treated Appellant following the car accident. Her testimony is the last that is transcribed. There is no testimony from any of the State's remaining witnesses. The directed

verdict arguments are also missing. Moreover, the defense's case, consisting of testimony from Appellant's ex-girlfriend and Appellant, is missing in its entirety. *See Exhibit D (Incomplete Transcript of remaining testimony)*.

6) The missing testimony of Corporal Brooks, Dr. Lance, and others, along with the directed verdict arguments comprised a substantial portion of the third day of trial as the transcript for that day is only eighty six pages and includes closing arguments, jury instructions, the verdict, and sentencing. Court Reporter Hiskell has never explained what "technical difficulties" prevented transcribing this portion of the trial.

7) The amount of missing testimony in Appellant's case is considerable. Through no fault of Appellant, meaningful appellate review is impossible with the current, incomplete transcript. *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); *Cf: State v. Serrette*, 375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007) (holding that the lack of transcript was due to the defendant's absence for a ten-year period, which was "not a situation where the court reporter's equipment malfunctioned at trial leading to a loss of the trial transcript.").

8) 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) (finding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed); *Koon v. State*, 358 S.C. at 367, 595 S.E.2d at 460 (recognizing a court's power to remand for a reconstruction hearing); *Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992) (holding trial court did not err in granting

property owner's request to reconstruct the record of zoning proceeding where portions of original tape of hearing were incapable of being transcribed).

9) A full and complete transcript of Appellant's trial, including the missing portions from May 13-14, 2015, is necessary in the interests of due process and to ensure meaningful appellate review of Appellant's conviction.

10) Appellant respectfully requests an order remanding his case to the Greenville County Court of General Sessions for reconstruction of the missing portions of the trial transcript in order to perfect the direct appeal. *State v. Ladson*, 373 S.C. at 325, 644 S.E.2d at 273-274. While this motion is pending, Appellant asks this Court to hold the timelines for filing his initial brief and designations in abeyance.

WHEREFORE, in order to allow for meaningful appellate review, Appellant respectfully requests that this Court remand his case to the Greenville County Court of General Sessions for reconstruction of the missing portions of the trial transcript and to hold the timelines for filing the initial brief of Appellant in abeyance during the pendency of this motion.

Respectfully submitted,



John H. Strom  
Appellate Defender

Division of Appellate Defense,  
South Carolina Commission on Indigent Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

*Attorney for Appellant*

This 29<sup>th</sup> day of September, 2016

**EXHIBIT A**



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 15, 2015

Ms. Caroline Hiskell  
Circuit Court Reporter  
32 Duxbury Lane  
Easley, SC 29642

Dear Ms. Hiskell:

Please provide us with the following transcript:

The State v. Terry E. McCall, Appellate Case No. Case #: 2012-GS-23-10242  
2015-001097

County: Greenville Date of Trial: May 11-14, 2015

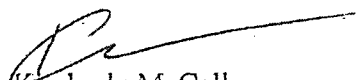
Presiding Judge: Robin B. Stilwell

Pursuant to the SC Court Reporter's Manual, please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Consecutive numbering of pages must be used throughout all volumes regardless of the number of volumes involved. Additionally, please transcribe the **jury selection**, and the State and defense counsel's **opening and closing arguments**, and include the **jury strike sheet**. Please be sure to include **Headers** and a **complete index** including a **listing of exhibits**.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

To ensure prompt payment, please sign and complete the enclosed CID FORM 3500 and include the original criminal case number (Indictment number) where the space is provided.

Sincerely,

  
Kimberly McCall  
Administrative Coordinator

cc: S.C. Court of Appeals  
Attorney General's Office



Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

June 15, 2015

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JUN 15 2015  
SC Court of Appeals

Ms. Caroline Hiskell  
Circuit Court Reporter  
32 Duxbury Lane  
Easley, SC 29642

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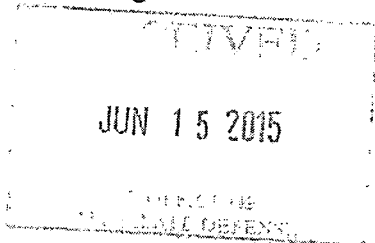
County: Greenville Date of Trial: May 11-14, 2015

Presiding Judge: Robin B. Stilwell

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Sincerely,

Kimberly McCall  
Administrative Coordinator

cc: S.C. Court of Appeals  
Attorney General's Office



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
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June 15, 2015

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JUN 15 2015

SC Court of Appeals

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The State v. Terry E. McCall, Appellate Case No. Case #: 2012-GS-23-10242  
2015-001097

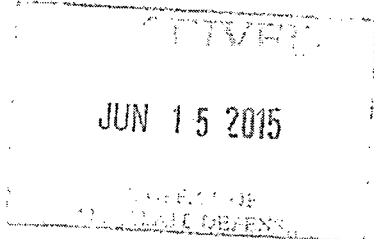
County: Greenville Date of Trial: May 11-14, 2015

Presiding Judge: Robin B. Stilwell

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Sincerely,

Kimberly McCall  
Administrative Coordinator

cc: S.C. Court of Appeals  
Attorney General's Office



COPY

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Wanda H. Carter, Deputy Chief Appellate Defender

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August 28, 2015

AUG 28 2015

SC Court of Appeals

Ms. Desiree Allen  
S.C. Court Administration  
1220 Senate Street  
Columbia, South Carolina 29201

Dear Ms. Allen:

The transcript listed below was requested by this office. Pursuant to Rule 207(a)(2), SCACR, the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same.

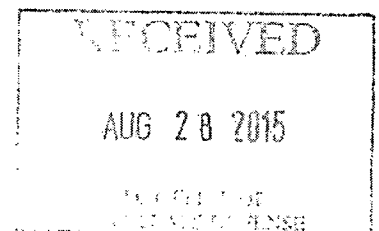
<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Caroline Hiskell	8/14/15	Terry E. McCall 2015-001097

Trial Date: May 11-14, 2015

I would appreciate your confirming in writing as to the status of the above-referenced transcript. If you should have any questions, please do not hesitate to contact me.

Sincerely,

Maria Paula Murdoch  
Administrative Coordinator



cc: S.C. Court of Appeals  
Attorney General's Office

COPY



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

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

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Columbia, South Carolina 29211-1589  
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OCT 20 2015

SC Court of Appeals

October 20, 2015

Ms. Desiree Allen  
S.C. Court Administration  
1220 Senate Street  
Columbia, South Carolina 29201

Dear Ms. Allen:

The transcript listed below was requested by this office. Pursuant to Rule 207(a)(2), SCACR, the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same.

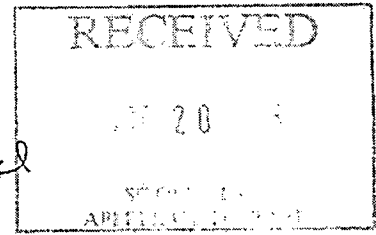
<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Caroline Hiskell	8/14/15	Terry E. McCall, 2015-001097

Trial Date: May 11-14, 2015

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Sincerely,  
*Maria Paula Murdoch*

Maria Paula Murdoch  
Administrative Coordinator



cc: SC Court of Appeals  
Attorney General's Office



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

COPY

Division of Appellate Defense  
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Robert M. Dudek, Chief Appellate Defender  
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Facsimile: (803) 734-1397

November 19, 2015 RECEIVED

Ms. Desiree Allen  
S.C. Court Administration  
1220 Senate Street  
Columbia, South Carolina 29201

NOV 19 2015  
SC Court of Appeals RECEIVED  
NOV 19 2015

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Ms. Caroline Hiskell	8/14/15	Terry E. McCall, 2015-001097

Trial Date: May 11-14, 2015

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Sincerely,

Maria Paula Murdoch  
Administrative Coordinator

cc: S.C. Court of Appeals  
Attorney General's Office

COPY



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
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RECEIVED

December 21, 2015

DEC 21 2015

Ms. Desiree Allen  
S.C. Court Administration  
1220 Senate Street  
Columbia, South Carolina 29201

SC Court of Appeals  
RECEIVED  
DEC 21 2015  
SC OFFICE OF  
APPELLATE DEFENSE

Dear Ms. Allen:

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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Caroline Hiskell	8/14/15	Terry E. McCall, 2015-001097

Trial Date: May 11-14, 2015

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Sincerely,

Maria Paula Murdoch  
Administrative Coordinator

cc: S.C. Court of Appeals  
Attorney General's Office



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
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February 8, 2016

RECEIVED

FEB 08 2016

SC Court of Appeals

Ms. Desiree Allen  
S.C. Court Administration  
1220 Senate Street  
Columbia, South Carolina 29201

Dear Ms. Allen:

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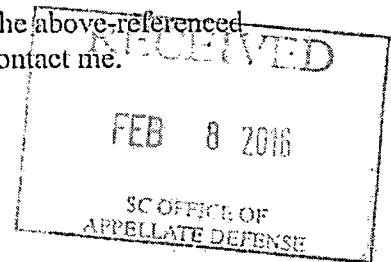
<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Caroline Hiskell	8/14/15	Terry E. McCall, 2015-001097

Trial Date: May 11-14, 2015

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Sincerely,

Paula Murdoch  
Administrative Coordinator



cc: S.C. Court of Appeals  
Attorney General's Office



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

COPY

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RECEIVED

March 9, 2016

MAR 09 2016

Ms. Desiree Allen  
S.C. Court Administration  
1220 Senate Street  
Columbia, South Carolina 29201

SC Court of Appeals RECEIVED  
MAR 9 2016  
SC OFFICE OF APPELLATE DEFENSE

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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Caroline Hiskell	8/14/15	Terry E. McCall, 2015-001097

Trial Date: May 11-14, 2015

I would appreciate your confirming in writing as to the status of the above-referenced transcript. If you should have any questions, please do not hesitate to contact me.

Sincerely,

Paula Murdoch  
Administrative Coordinator

cc: S.C. Court of Appeals  
Attorney General's Office



South Carolina Court Administration  
South Carolina Supreme Court  
Columbia, South Carolina

ROSALYN FRIERSON  
DIRECTOR

1220 SENATE STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1800  
FAX: (803) 734-0269

June 3, 2016

Mr. Terry McCall, #233236  
RCI-C-A-32  
P.O. Box 2039  
Ridgeland, SC 29936

Dear Mr. McCall:

I am responding to the letters you've been sending since February 2016 regarding this transcript. I spoke with your brother earlier this week regarding this situation and explained that I would write to you to try to eliminate some of the frustration I am sure you are feeling over this situation. I am sorry that you haven't received a satisfactory response. By way of information, when the Division of Appellate Defense requests a transcript, I assume that they are your legal representative. That office has been writing to us each month to ask about the status of the transcript. Upon receipt of these inquiries, my office contacts the court reporter so that we can provide their response to the inquiry. We have been waiting for responses to our inquiries that have gone unheeded from Ms. Hiskell as well. After reviewing this situation, it appears that the transcript is not yet completed and further, that no extensions have been requested. Therefore, there are no copies to send to you or the Division of Appellate Defense.

Because the transcript is not completed and is long overdue, by copy of this letter, I am directing that Ms. Hiskell request the outstanding extensions and respond in writing to you, Appellate Defense, the Court of Appeals, and myself about the circumstances surrounding the delay in delivery of this transcript.

My office will investigate further and take whatever action is necessary to ensure that the appropriate extensions are approved and that the transcript is delivered to the requester, Office of Appellate Defense. I will do whatever is necessary to move this process along. Of course, you are free to write again, but I don't think it will be necessary. Thank you for your continuing patience.

Sincerely,

Desiree R. Allen  
Court Reporter Manager

CC: Caroline Hiskell, Court Reporter  
S.C. Court of Appeals  
Division of Appellate Defense



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

COFY

Division of Appellate Defense  
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Facsimile: (803) 734-1397

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

June 28, 2016

RECEIVED

JUN 28 2016

SC Court of Appeals

Caroline Hiskell  
Circuit Court Reporter  
32 Duxbury Lane  
Easley, SC 29642

Re: The State v. Terry E. McCall - Appellate Case No. 2015-001097

Dear Ms. Hiskell:

On June 24, 2016 we received two volumes of the transcript, respectively May 12 and May 13, 2015. We have not received the sentencing day, May 14, 2015. We have no indication you were not the court reporter on May 14, 2015.

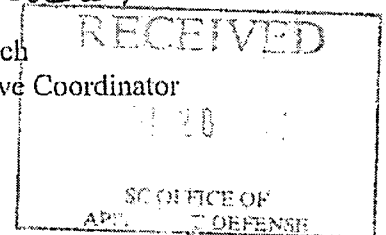
Please let us know if you are sending the May 14, 2015 transcript. If you know that another court reporter took that portion, please let me know as soon as possible, because we would have to expedite that transcript immediately.

I am attaching a voucher for you to complete and return. Please contact me, if you have any questions.

Sincerely,

*Paula Murdoch*

Paula Murdoch  
Administrative Coordinator



/mpm

cc: S.C. Court of Appeals  
Court Administration  
Mr. Terry McCall

Enclosure

**Indigent Defense - July 5, 2016**

**To: SC Commission on Indigent Defense**

**Re: Requested transcripts**

**Enclosed is the transcript State versus Terry McCall.**

**I was asked in your letter to confirm that State versus Donald Young is complete as to what I have remaining. There was a theft and the files for that case were taken.**

**Also, certain portions of State versus Terry McCall as well as they were housed on the same disk. The breaks are listed in the transcript.**

**Also, inquiries about the follows:  
State versus Keynon Robinson. This transcript has been delivered and paid for.  
State versus McLaurin. I send a status form stating this was not my case.**

**Please inform Court Administration that I have answered these inquiries to the best of my ability.**

**Thank you.**



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

July 8, 2016

Ms. Caroline Hiskell  
Court Reporter  
32 Duxbury Lane  
Easley, SC 29642

Re: The State v. Terry E. McCall – 2015-001097

Dear Ms. Hiskell:

We have received the transcript of the final day of the trial on May 14, 2015. You informed our office by facsimile that this transcript is incomplete due to the theft of your records. Our inspection of the transcript shows that part of the testimony of witness Tommy Brooks is missing "due to technical difficulties" as you state on page 358 of the transcript. Please be advised that we have not received a certification page or a completed voucher from you to date.

This case is being assigned to an attorney with the understanding that a motion for a reconstruction hearing will likely be necessary, given the missing testimony, despite the time between the request for the transcript and its completion. Regardless, we still need for you to provide us with a certification page and a completed voucher. I do appreciate your cooperation. Please contact me if you have any questions.

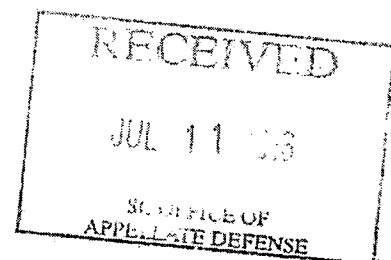
Sincerely,

Paula Murdoch  
Administrative Coordinator

Enclosure

cc: Court of Appeals  
Court Administration  
Terry McCall

/mpm





**SCCID**  
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

**COURT REPORTERS' REQUEST FOR PAYMENT  
FOR TRANSCRIPT IN CRIMINAL INDIGENCY CASE**

**TO: SC COMMISSION ON INDIGENT DEFENSE**  
PO BOX 11589  
COLUMBIA, SC 29211-1589

SIGNATURE OF APPROVING OFFICIAL AT APPELLATE DEFENSE:

FORWARD THIS SIGNED AND COMPLETED FORM ALONG WITH THE REQUESTED TRANSCRIPT TO THE SC COMMISSION ON INDIGENT DEFENSE, APPELLATE DIVISION. THE SC COMMISSION ON INDIGENT DEFENSE, APPELLATE DIVISION WILL APPROVE THIS REQUEST FOR PAYMENT AND FORWARD THE REQUEST TO THE S.C. COMMISSION ON INDIGENT DEFENSE FOR PAYMENT. ALL QUESTIONS REGARDING PAYMENT SHOULD BE MADE TO THE S.C. COMMISSION ON INDIGENT DEFENSE, P.O. BOX 11433, COLUMBIA, SC 29211-1433, PHONE: 803.734.1343, e-mail: executive@sccid.sc.gov.

CASE NAME:  
*State vs Terry McCall*

CRIMINAL CASE (INDICTMENT) NO.(s):  
*2015-001097*

DATE TRANSCRIPT REQUESTED BY APPELLATE DEFENSE:

DATE TRANSCRIPT PROVIDED TO APPELLATE DEFENSE:

**PLEASE NOTE THAT THE DEFENSE OF INDIGENTS FUND WILL REIMBURSE THE REQUESTING PARTY FOR EITHER THE ORIGINAL TRANSCRIPT OR ONE COPY, BUT NOT FOR BOTH.**

RULE 607 (H)(1), SCACR, PROVIDES THAT IN ALL CRIMINAL INDIGENCY CASES, INCLUDING POST-CONVICTION AND SEXUAL VIOLENT PREDATOR PROCEEDINGS, THE FEE FOR THE ORIGINAL TRANSCRIPT IS THREE DOLLARS AND TWENTY-FIVE CENTS (\$3.25) PER PAGE AND THE FEE FOR A COPY OF THE TRANSCRIPT IS SEVENTY-FIVE CENTS (.75) PER PAGE.

PURSUANT TO THE REQUEST OF THE S.C. COMMISSION ON INDIGENT DEFENSE, APPELLATE DIVISION, THE TRANSCRIPT IN THE ABOVE MATTER WAS PROVIDED TO THAT OFFICE. REIMBURSEMENT IN THE FOLLOWING AMOUNT IS HEREBY REQUESTED:

- ORIGINAL TRANSCRIPT OF 390 PAGES: \$ 1267.50
- COPY OF ORIGINAL TRANSCRIPT OF \_\_\_\_\_ PAGES: \$ \_\_\_\_\_
- OTHER (Please specify): \_\_\_\_\_: \$ \_\_\_\_\_

**TOTAL PAYMENT REQUESTED:** \$ 1267.50

PRINTED OR TYPED NAME OF COURT REPORTER:  
*Caroline Hiskell*

SIGNATURE OF COURT REPORTER:  
*Caroline Hiskell*

ADDRESS:  
*32 Duxbury Lane  
Easley, SC 29642*

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## State versus McCall

1 I, the undersigned Caroline Hiskell, Official  
2 Court Reporter for the Thirteenth Circuit of the State of  
3 South Carolina, do hereby certify that the foregoing is a  
4 true, accurate, and complete transcript of record of all  
5 proceedings had and evidence introduced in the trial of  
6 the captioned case, relative to appeal, in Court of  
7 General Sessions, Greenville County, this 14th day of May,  
8 2015.

9 I do further certify that I am neither of kin,  
10 counsel, nor interest to any party hereto.

11  
12  
13 -----

14 Caroline Hiskell  
15  
16  
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18  
19  
20  
21  
22  
23  
24  
25

**EXHIBIT B**

## Ryan Freeman - Cross

1 impairments, the answer would be no just due to the brief  
2 exchange.

3 DEFENDANT MCCALL: No more questions.

4 MS. DRAWDY: No redirect.

5 We'd ask that this witness be excused.

6 THE COURT: Certainly, have a great day.

7

8 (AT WHICH TIME THE TESTIMONY OF CHRIS STACH,  
9 TERESA DAVIS DEWEISE AND JOSH ROBINSON CAN NOT BE  
10 TRANSCRIBED.)

11

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12 MR. ERWIN: Sorry, Your Honor.

13 THE COURT: It's okay. Are we ready for the  
14 jury?

15 MR. OVERBY: Yes, sir.

16 MR. ERWIN: Yes, sir.

17 THE COURT: Bring them in please.

18 (Jury enters the courtroom)

19 THE COURT: Good morning, ladies and  
20 gentlemen, welcome back. Alright, you may call your next  
21 witness.

22 MR. OVERBY: If it please the Court, Your  
23 Honor. At this time the state calls Sergeant Wes Hiatt.

24 THE CLERK: Sergeant Hiatt, would you come to  
25 the stand, place your left hand on the Bible and raise

**EXHIBIT C**

## Tommy Brooks - Direct Examination

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. OVERBY:

4 Q Good morning, Corporal Books, how are you today?

5 A I'm well. Thank you.

6 Q Where are you employed, sir?

7 A I'm with the South Carolina Department of Public  
8 Safety with the highway patrol division.

9 Q Where within the highway patrol are you employed?

10 A The MAIT team here in the Upstate.

11 Q He mentioned some of the duties, can you expand  
12 on some of those duties as it relates to accident  
13 investigation?

14 A Yes, sir. Typically what happens when a road  
15 trooper comes on the scene of a collision and they have a  
16 question about something, did something happen why it went  
17 left of the center or was there some mechanically wrong  
18 with the vehicle, then they'll notify their supervisor who  
19 then in turn gets our MAIT supervisor. We respond to the  
20 scene.

21 Typically, unless there's a death involved,  
22 we will only send one trooper to the active collision  
23 scene which means where the cars are still there and have  
24 come to rest. He's start document the scene, photographs,  
25 videos and also looking where the road tripper where

## Tommy Brooks - Direct Examination

1 actually marked. All the evidence that they can find will  
2 be marked with orange paint. The next working day that we  
3 can get out there, that's where we do our forensic  
4 mapping.

5 In most cases, like I said if there was a  
6 death involved, we would actually do it that night.

7 When we go on the scene, we'll actually do a  
8 forensic mapping of it and basically what that is what a  
9 surveyor does when they go out and they're mapping points,  
10 elevation points and different things, but instead of us  
11 marking corners of property, we're doing evidence points.  
12 The only difference is we use a data collector that has to  
13 label the evidence like tire marks, skid marks, fluid  
14 trails, things of that nature.

15 And typically we will map the entire roadway,  
16 edges of payment, all of the lines as you see them on the  
17 road and we can come up with a scale diagram, and also map  
18 of the evidence that's identified. We'll actually come up  
19 with a scale diagram so that you can look at it and see  
20 what happened. With that we try to answer all the  
21 questions that the troop may have. If something left the  
22 center, which one left the center or maybe why did it go  
23 off the center and things of that nature.

24 Q That sounds awfully complicated. Did you have to  
25 have some special training in order to do that?

## Tommy Brooks - Direct Examination

1           A    Yes, sir, I did.

2           Q    Talk about that a little bit.

3           A    Well, I actually -- I have to keep this. There's  
4 so much. There's well over 1000 hours of training, but  
5 basically to be on the MAIT team you have to have what we  
6 call the three core courses, which is your basic knowledge  
7 for the accident reconstruction.

8                         In 2001, I had the accident scene traffic  
9 investigation course, which was 80 hours. December of  
10 2001 I went to the advance collision investigation course  
11 which was 80 hours, and then in January of 2002, I went to  
12 the traffic collision reconstruction which gave me my  
13 three basic core courses.

14                         From 2001 up until 2008, I was what was  
15 considered a MAIT associate which meant I had all the  
16 skills. I was able to help the MAIT team as they came to  
17 our respective counties to work on cases, but I wasn't on  
18 the permanent MAIT team. I actually became a member of  
19 MAIT full time in 2008. I have been there ever since.

20           Q    How long is MAIT been around?

21           A    It actually started when they came on the highway  
22 patrol in 1996.

23           Q    So they've been doing this for a while?

24           A    Yes, sir.

25           Q    How long have you been doing accident

## Tommy Brooks - Direct Examination

1 reconstruction?

2 A Since 2001 -- actually 2002 when I finished up.  
3 Once you get through with the three core courses, you're  
4 allowed to go in and assist with the cases, so since 2002  
5 when I was turned loose.

6 Q And could you estimate how many accidents you've  
7 been involved in investigating?

8 A I wouldn't want to try.

9 Q Very well. Have you ever been qualified as an  
10 expert to testify by a court?

11 A Yes, sir, I have, three different occasions in  
12 general sessions.

13 Q And what have you been qualified as?

14 A In collision reconstruction in all three cases.

15 MR. OVERBY: Your Honor, at this time I  
16 would offer Corporal Brooks as an expert in the field of  
17 collision reconstruction.

18 THE COURT: Any objection?

19 DEFENDANT MCCALL: No objection, Your Honor.

20 THE COURT: Okay, I will so qualify him as an  
21 expert in this field.

22 Ladies and gentlemen, as I stated to you  
23 yesterday, somebody may be qualified as an expert because  
24 of their expertise, experience, or knowledge. Just  
25 because somebody is qualified as an expert witness as an

## Tommy Brooks - Direct Examination

1 expert witness doesn't mean that you prefer their  
2 testimony over any other piece of evidence. You can  
3 consider it exactly like you consider any other piece of  
4 evidence or any other testimony that you receive from any  
5 other witness. That means you consider what weight it has  
6 in your deliberations.

7                   Go ahead, Mr. Overby.

8                   BY MR. OVERBY:

9                   Q     Corporal Brooks, was the MAIT team assigned to an  
10 accident scene investigation on March 4, 2012?

11                  A     They were.

12                  Q     Were you actively dispatched to the scene?

13                  A     No, sir. Since a death was not involved, they  
14 actually sent one trooper out and that ended up being  
15 Lance Corporal Andis.

16                  Q     In general for accident investigations, what is  
17 the importance of that trooper being out there on the  
18 scene?

19                  A     Well, first and foremost you have certain types  
20 of evidence that will disappear over time. You have marks  
21 that tires make when they begin to heat up when these  
22 collisions forces apply themselves and the will actually  
23 disappear. So we send a guy out to go ahead and make sure  
24 that these things have been marked properly. Sometimes,  
25 the road troopers they don't see it but then we go back

## Tommy Brooks - Direct Examination

1 behind them and we look at what we have and we will  
2 actually physically mark it if it hasn't been marked.

3           Again, some of the stuff that gets marked  
4 doesn't apply to the collision but we have to mark it and  
5 photograph it and mark it anyway.

6           Q     So when you say mark, typically how is something  
7 marked?

8           A     Well, it really depends on what it is. It's like  
9 say for instance if it's final rest of a car, like if the  
10 Bible here was a vehicle, where it stops on the counter  
11 here, if it's left rear, right rear, whatever, we're going  
12 paint exactly where that tire is at, so when we go back  
13 and map it we can actually put a scaled car back on the  
14 same spot at its final rest and that's how we come up with  
15 the final rest positions.

16                     Skid marks are the same way. They are  
17 actually marked and gouge marks, fluid trails and things  
18 of that nature.

19           Q     I'm going to ask you to step down and just a  
20 minute, if you wouldn't mind, and stand to my right, sir.  
21 I'm going to show you what's marked as State's Exhibit No.  
22 17, okay, and it's already into evidence.

23                     Do you see evidence of markings from the  
24 scene itself?

25           A     Yes, sir, I do.

## Tommy Brooks - Direct Examination

1 Q Would you just point them out to the jury if you  
2 wouldn't mind?

3 A The tire right here with the orange paint there's  
4 "t" right there. Typically what happens is you put the  
5 orange paint down the side of the tire and the portion  
6 that comes out it forms a "t" is actually in the center  
7 where the wheel is. Typically what happens is when you  
8 mark these things you mark the wheels that you can  
9 actually get to. Sometimes they're damaged so badly that  
10 you can't mark them, you can't spread the paint on them,  
11 but in this case they were able to mark the final rest of  
12 this truck.

13 Q Was the same thing done on this right here?

14 A Yes, sir. And what the road troopers have done  
15 here since it was so deformed, they marked the wheel here,  
16 wheel here, and actually drew a line where the front of  
17 the car was. They'll do that from time to time depending.  
18 Sometimes they'll put a line and an arrow showing the  
19 direction that it was sitting when it got there.

20 Q Do you actually recognize this vehicle?

21 A Yes, sir, I do.

22 Q Where have you seen this vehicle?

23 A I actually saw this vehicle at a wrecker service.  
24 Along with my normal duties I'm actually Upstate mechanic.  
25 I do vehicle inspections on cars and I'm also the tire

## Tommy Brooks - Direct Examination

1 inspector for the whole state. So I was actually tasks  
2 with doing a mechanical exam on this particular vehicle.

3 Q Okay. You can have a seat.

4 A Thank you.

5 Q I'm going to show you what I'd like to have  
6 marked as State's Exhibit No. 44 through 64.

7 (Photographs marked as State's Exhibit Nos.  
8 44 through 64 for identification.)

9 BY MR. OVERBY:

10 Q I'm showing you some items that have been marked  
11 as Exhibit 44 through 64, can you tell me what those are  
12 photographs of?

13 A These are actually photographs of the inactive  
14 collision scene out there on 291.

15 Q Do those photographs, have you ever seen those  
16 photographs before?

17 A Yes, I have.

18 Q When have you seen those photographs?

19 A I reviewed these again this morning.

20 Q And do they fairly and accurately depict the  
21 accident scene as you perceived it?

22 A Yes, sir.

23 MR. OVERBY: At this time, Your Honor, I  
24 request to move State's through 44 through 64 into  
25 evidence.

## Tommy Brooks - Direct Examination

1 THE COURT: Any objections?

2 DEFENDANT MCCALL: No objection.

3 THE COURT: Alright admitted into evidence.

4 (Photographs marked as State's Exhibit Nos 44  
5 through 64 for identification were admitted into  
6 evidence.)

7 BY MR. OVERBY:

8 Q You mentioned those are photographs of inactive  
9 collision scene?

10 A Yes, sir.

11 Q What is an inactive scene?

12 A An inactive scene is where all the vehicles have  
13 been clear away, debris has been removed and all the  
14 emergency vehicles that were there responding to the wreck  
15 are gone.

16 Q Now, the markings that you indicated in the other  
17 photos, where are they?

18 A They're still on the pavement.

19 Q And how do you use those in your investigation?

20 A Well, once we go out and we begin our forensic  
21 mapping, again we set up our station just like a surveyor  
22 would. Once we begin we have a guy who is an architect  
23 who is going around with the prism pole. He actually sits  
24 on each point and tells the guys who are running the  
25 station what this particular point is going to be whether

## Tommy Brooks - Direct Examination

1 it be the beginning of a gouge mark or beginning of a tire  
2 mark, lane line, edge of pavement, whatever, that's what he  
3 is actually doing. He's actually physically walking  
4 around and sitting right there on top of the evidence  
5 points and we're noting those into the data clip. So once  
6 we go back and put the forensic mapping in to the  
7 computer, we're able to draw a scale of what we see.

8 Q So the data collector is collecting the  
9 information from the architect?

10 A That is correct.

11 Q And that is how you create a scale of diagram?

12 A Yes, sir.

13 Q Corporal Brooks, I'm handing to you what I'd like  
14 to have marked State's Exhibit No. 65.

15 (Disc marked as State's Exhibit No. 65 for  
16 identification.)

17 BY MR. OVERBY:

18 Q What is that, sir?

19 A That's the disk for the photographs that I viewed  
20 this morning. I actually initialed that.

21 Q Okay. The photographs on this disc are they the  
22 exact same ones you just reviewed?

23 A Yes, sir.

24 MR. OVERBY: Your Honor, at this time I'd  
25 like to move State's Exhibit 65 into evidence.

## Tommy Brooks - Direct Examination

1 DEFENDANT MCCALL: No objection.

2 (Disc marked as State's Exhibit No. 65 for  
3 identification was admitted into evidence.)

4 BY MR. OVERBY:

5 Q Now, Corporal Brooks, I about 20 photographs,  
6 correct?

7 A Yes, sir.

8 Q When you photograph the scene, how do you do it?

9 A It depends on the investigator that's actually  
10 taking the photographs. We have our own certain beginning  
11 points, but particular what happens with photographs is  
12 you will take the duration that one vehicle is coming, say  
13 the Ford Explorer, and you'll take photographs all the way  
14 up until the area of impact and then you'll follow it from  
15 the area of impact all the way to its final rest and then  
16 you come back in the other direction. If it's two cars,  
17 as in this case, you begin to take it from the other  
18 direction so you'll have both ends of the spectrum.

19 Q Now, I'm going to ask you again to step down,  
20 sir. Okay. What is this a photograph of?

21 A This is 291 and if you're familiar at all with 291  
22 near Cherrydale, the Spinx Station is back behind us and  
23 on the right. This is actually facing northbound the  
24 direction of where the pick up truck would be going. In  
25 an instance where you'll see we're not directly in the

## Tommy Brooks - Direct Examination

1 lane taking the photograph, the only reason we're not  
2 standing in the middle of the lane is the amount of  
3 traffic. We can't do that, but in this case the view that  
4 you have is the direction that the pick up truck would be  
5 going.

6 Q So if we were to look at State's No. 1, here,  
7 which direction would this photograph be facing?

8 A This photograph is actually -- the direction of  
9 travel is you're looking up this direction and you can  
10 actually see where the painted media starts to close in  
11 and that's right in the area of this turn right here.

12 Q Okay. What is that a photograph of?

13 A The final rest for the Ford Explorer.

14 Q Okay. Why are there only three markings here.

15 A The three marks is the damage on the Ford  
16 Explorer was so severe they can only get to it and put it  
17 down exactly where it was it.

18 Q I see the mark that was back there and it's on  
19 the one that's on the farthest right there, what is that  
20 mark?

21 A That is the left rear.

22 Q And how do you know that that's the case?

23 A Well, if you zoom in it's labeled as LR. Some  
24 people put left side, LSB, but in this case left rear is  
25 the driver's side rear.

## Tommy Brooks - Direct Examination

1 Q What is that a photograph of?

2 A Different area of the same.

3 Q What are we looking at here?

4 A Again, what the investigator in this case and  
5 like I said earlier and we map. This is Greenville county  
6 so we have people that wreck all the time so we have to  
7 separate the evidence as we find it. In this case what  
8 he's showing me here there's actually a tire mark right  
9 here that had been marked by the troopers. It's in a  
10 straight line, however we still would document with  
11 photographs and if we go back and map it, if it doesn't  
12 match we go back to a separate later. Everything that's  
13 out there we will map it.

14 There's a curve marked here along with a  
15 fluid trail that actually came from the Ford Explore.

16 Q You know that based on the evidence marking  
17 scenes and the information you've collected?

18 A Yes, sir.

19 Q These photographs, what are they showing you?

20 A Closing in the final rest and what we call the  
21 area of impact of the two vehicles.

22 Q Moving in a little bit more. You used the word  
23 gouge mark, could you just expand on that a little bit?

24 A Any mark in the pavement that's not there  
25 naturally. Any kind of metal touching the ground or

## Tommy Brooks - Direct Examination

1 touching the pavement or anything that it scrapes cross.

2 Q The area of impact, how much deviation is there  
3 from actually point of the impact?

4 A It can be two to three feet. In this particular  
5 collision this was one that we would consider an offset  
6 head on and what I mean when I say offset head on is when  
7 you think of a collision you think of two cars hitting,  
8 once they move off, every car has its own set of mass which  
9 is in between. Anything outside of the offset mass is an  
10 offset headon. In this case where the vehicles got  
11 together, that's basically what we had.

12 Q We know that where the vehicles collided is?

13 A Right in here, yes, sir.

14 Q You mentioned the tire marks from the truck  
15 earlier, is that evident in this photograph?

16 A Yes, sir.

17 Q And that's indicated by those marks there?

18 A Yes, sir and you can actually see where this one  
19 stops for the left rear and the right rear continues on  
20 underneath the tire.

21 Q Okay. You said that generally speaking you take  
22 them from the point of view from the vehicle itself, point  
23 of travel.

24 A Yes.

25 Q So is this essentially what these photographs

## Tommy Brooks - Direct Examination

1 show?

2 A What you clicked pass would be the actual be the  
3 direction of travel for the Explorer.

4 Q This one right here?

5 A Yes, sir. Again, we can't out in the lane  
6 because the traffic was so heavy.

7 Q This would be Mr. McCall's vehicle, correct?

8 A Yes.

9 Q Thank you. You can have a seat. Mark all the  
10 evidence and you've looked at the scene and you mentioned  
11 t he word forensic mapping.

12 A Yes, sir.

13 Q Once you've input all he data, what is created by  
14 that?

15 A It's created a scale diagram. It's a color  
16 drawing of the road and then it's two scale.

17 Q So the general background is 291?

18 A Yes, sir.

19 Q And it's two scale?

20 A Yes, sir.

21 MR. OVERBY: I'd like to show you what I'm  
22 going to have marked as State's Exhibit No. 66 through 68.

23 (Photographs marked as State's Exhibit Nos.  
24 66 through 68 for identification.)

25 BY MR. OVERBY:

## Tommy Brooks - Direct Examination

1 Q What do we have there?

2 A Impact evidence that we have on the scene and  
3 vehicles at final rest along with the evidence.

4 Q And this is what you created as part of your  
5 investigation?

6 A Yes, sir.

7 Q Has it been altered in any way?

8 A No, sir.

9 MR. OVERBY: I'd like to move these into  
10 evidence.

11 DEFENDANT MCCALL: No objection.

12 (Photographs marked as State's Exhibits No.  
13 66 through 68 admitted into evidence.)

14 BY MR. OVERBY:

15 Q This is State's 66.

16 A Yes, sir.

17 Q The roadway is essentially the first diagram?

18 A That's correct.

19 Q So everything else that gets added to the diagram  
20 goes on this?

21 A Yes, sir. The one that we would generate is  
22 roadway which is what you see right there, a road with no  
23 cars on.

24 Q What is depicted in this diagram?

25 A We're using that angles of collision off of the

## Tommy Brooks - Direct Examination

1 damaged profiles of the two cars, placed them back on the  
2 area of impact we're able to determine where the Ford came  
3 into the pick up truck at.

4 Q I'm going to show you State's No. 14 which is the  
5 Explorer?

6 A Yes, sir.

7 Q And No. 17.

8 A Yes, sir, that's the pick up truck.

9 Q You mentioned area of collision, based off the  
10 Explorer, what do you see there and why is that important?

11 A If you look at it you can see how the front end  
12 is pushed back towards the driver's compartment and these  
13 SUV vehicles sit up just a little bit higher. In this  
14 case, these trucks are extremely rigid, they're strong.  
15 It just so happens that the weaker points any time you see  
16 something special that are done with these trucks, they  
17 are actually done broad side or dead center when they test  
18 these things.

19 In this case it rode up in the softer metal  
20 that was on there and the fact that the damage is so high  
21 leads me to believe from my experience, there's no braking  
22 involved from the Explorer prior to it engaging in this  
23 pick up truck.

24 Q These vehicle inspections, I want to show you a  
25 photo of the pick up truck, State's 6, essentially you

## Tommy Brooks - Direct Examination

1 notice -- does that help you notice what your opinion is?

2 A You can actually see that on the driver's side is  
3 more on the -- all of this stuff is broken out. It's  
4 typically induced by the collision. All of the major  
5 damage, you can see the direction of the hood is actually  
6 pushed. Headlight area to the side of it pushed all the  
7 way down the side, side swipe offsetting head on.

8 Q So your opinion is in this photograph show you  
9 where you think the area of collision is on the truck?

10 A You can see it went in right there in the  
11 headlight area just pushed into the softer metal and rode  
12 all the way down the side. The gouging would be right in  
13 here and this would be your area of impact.

14 Q Based off that, how does the diagram reflect your  
15 findings?

16 A Again, that shows the first touch of the  
17 vehicles. It's not going to show maximum engagement, but  
18 this is the area of impact for the vehicle.

19 Q Did you do a speed calculation in this case?

20 A No, sir. This particular case was a left the  
21 center case. Sometimes you have to do a speed calculation  
22 if we think that that's a sole factor in the collision.  
23 In this case, the question was we had a vehicle went left  
24 of center, which one did it. So we were able to go back  
25 and do the forensic mapping and answer the question.

## Tommy Brooks - Direct Examination

1 Q You've been involved in a lot of accidents,  
2 correct?

3 A Yes, sir.

4 Q Were you able to estimate a range of speed?

5 A The softer metal on the cars I've seen damage  
6 like that from 40 to up to high 60.

7 Q I'm going to show you State's Exhibit No. 63 what  
8 is this diagram demonstrate?

9 A This is what we call the sequence of events.  
10 What we do is we take a car from the direction that they  
11 were initially traveling and find out which one was going  
12 which direction. We line them back up on the scale  
13 diagram, all the evidence that was marked and mapped  
14 Again, the would be like our impact area which is the  
15 first touch. We have a tire mark that leads away and you  
16 can't really see. It would be like a purple color with  
17 just a little line on it because you can't run the scale  
18 and see it because it wouldn't fit on the paper.

19 Again, the Explorer goes through and comes to  
20 its final rest is here and the pick up truck actually  
21 rotated back off and came to its final rest right there.

22 Q What is State's Exhibit No. 67?

23 A That is what we call the evidence and final rest  
24 layer. It's both vehicles where they stop after the  
25 collision and it shows the evidence that we map. And

## Tommy Brooks - Direct Examination

1 actually if you had the piece of paper, you'd be able to  
2 see the gouge mark on here. It's just harder to see on  
3 the projector.

4 Q Let me see if I can zoom in.

5 A You'll see it that was marked in that little oval  
6 orange color.

7 Q Okay. I'm going to show you 68 again. Tell me  
8 about the path of travel based off the forensic evidence  
9 that you found?

10 A This case the road you saw from the photo curves  
11 back to the right and typically what you see with vehicles  
12 that don't have any kind of steering to it, they'll  
13 continue straight to the curve. People call it  
14 straightening out the curve is what we call it. If you let  
15 go of the wheel the car wants to keep going forward, it  
16 wants to go straight and unless you actually maneuver to  
17 make it go around the curve, it's not going to do that.

18 In this case angle that we lined it up on,  
19 puts it drifting over. And again with driver input if  
20 something happens, an evasive maneuver that you could take  
21 to move around something and you could try to get in your  
22 car, don't do it on the road, do it in the parking lot, if  
23 you turn your car hard back to one direction or the other,  
24 you're actually going to feel your car wanting to move,  
25 but you're still wanting to go straight in the direction

## Tommy Brooks - Direct Examination

1 it your going. It will actually load up and put all the  
2 weight on one corner of it either on the left or the right  
3 side and it will leave a little tire mark or leave marks  
4 where it's loading up because the tire heating up from all  
5 the weight shift.

6 In this case, they looked at that and they  
7 couldn't find anything in the other lanes.

8 Q You mentioned straightening out the curve, I'm  
9 going to show you State's No. 1 and is that depicted on  
10 State's No. 1.

11 A Yes, sir. This is a long sweeping curve and this  
12 is you Spinx station right here but the Explorer is coming  
13 in this direction and it continues to drift over into the  
14 other lane.

15 Q So was there any evidence of an evasive maneuver  
16 taking in this case?

17 A No, sir.

18 Q When would you find evidence of an evasive  
19 maneuver? Describe what that is?

20 A If you were traveling on this road and something  
21 was out in front of you or something run out in front you  
22 and you're turning the wheel and sometimes you don't know  
23 you're doing in. In this case, to get over to where this  
24 car is you would really have to sit down on it to get it  
25 over. There was no markings on the other lane. You had

## Tommy Brooks - Direct Examination

1 weight shift on the other vehicle. It looked like it just  
2 drifted straight over to the other lane.

3 Q It doesn't look like the Ford Explorer used  
4 anything to dodge?

5 A No, sir, there was no kind of pre-breaking or  
6 anything on the other car.

7 Q You also said you do vehicle inspections?

8 A Yes.

9 MR. OVERLY: I'd like to have this marked as  
10 70 and 71.

11 (Photographs marked as State's Exhibit Nos.  
12 69, 70 and 71 for identification.)

13 BY MR. OVERLY:

14 Q Did you have an occasion -- I'm going to show you  
15 what's been marked as 69, 70 and 71. Do you recognize  
16 those photographs?

17 A Yes, sir.

18 Q What do they depict?

19 A This actually depicts the work I did in my  
20 mechanical exam photographs of a brake fluid reservoir in  
21 the Ford Explorer and the last photograph was specifically  
22 of the right rear of that same Explorer.

23 MR. OVERBY: I'd like to move State's  
24 Exhibits 69, 70 and 71 into evidence.

25 THE COURT: Any objections?

## Tommy Brooks - Direct Examination

1 DEFENDANT MCCALL: No objections.

2 (Photographs marked as State's Exhibit Nos  
3 69, 70 and 71 for identification was admitted into  
4 evidence.)

5 BY MR. OVERBY:

6 Q When you do vehicle inspections, did you do a  
7 vehicle inspection on Mr. McCall's vehicle?

8 A Yes, sir.

9 Q What all did you inspect?

10 A For this particular instance, the defendant said  
11 he didn't have any brakes and typically when we get that,  
12 they're going to find me anyway to do a check, eight times  
13 out of 10 there's always brakes. In this case he's 100  
14 percent accurate. There was no service brakes at all on  
15 the vehicle.

16 Q What did you see about the vehicle that made you  
17 confirm that?

18 A The left front caliber wasn't working. The right  
19 front caliber was missing, parts missing so it couldn't  
20 have worked and with the brake fluid resevoir being empty.  
21 What causes the drums brakes to work is fluid bust from  
22 the brake fluid. Without fluid in the resevoir, nothing  
23 has ever pushed those brakes cylinders out on the back to  
24 push the pads out. The only brake that was functioning  
25 was the parking brake, the emergency brake. You don't get

## Tommy Brooks - Direct Examination

1 as much pressure out on the drum.

2 In this case the parking brakes are not  
3 adequate to stop a vehicle. They are designed just to  
4 hold a little bit of static pressure on the drum to keep  
5 the car was moving.

6 Q I'm going to show you State's Exhibit No. 70,  
7 could you tell the jury what that photo is?

8 A That is actually the resevoir for the brake fluid  
9 and the booster is directly behind it.

10 Q Was there any indication that the resevoir was  
11 leaking or anything?

12 A No, there was no indication that it was leacing.

13 Q And State's Exhibit No 69..

14 A That's again of a view showing inside the  
15 resevoir. And this is where the fluid resevoir would be  
16 and there is no indication there was ever any fluid in  
17 there.

18 Q Was there any fluid in there?

19 A Not during my inspection, no.

20 Q You heard Mr. McCall's audio?

21 A Yes, sir.

22 Q And you would agree with that?

23 A Yes, sure, 100 percent there was no brakes other  
24 than the park brake.

25 Q Do you see any evidence in the photograph of your

## Tommy Brocks - Direct Examination

1 theory on that?

2 A In this case you can tell that all of the paint  
3 is gone and that's from the extreme heat build up. you  
4 get that if something.

5 (Due to technical difficulties, this portion  
6 of the transcript can not be produced.)

7 THE COURT: Alright, we'll be in recess for  
8 about 10 minutes.

9 MR. ERWIN: One thing before we bring the  
10 jury back out. I mentioned that we have a witness under  
11 subpoena, Ms. Juliet Martin. Mr. McCall has asked to  
12 speak with her before she testifies so we can be prepared  
13 a little bit. On his next break, since he's going to be  
14 here so can it be arranged to have him meet her out here  
15 or go back there just for a few minutes during a break.

16 THE COURT: To give him access to her, y'all  
17 decide the appropriate way to do it. I defer to y'all  
18 entirely on security issues so however y'all want to make  
19 it happen, make it happen.

20 It is also my understanding that a nurse from  
21 the detention center will be coming up at 12:30 to bring  
22 the medication.

23 MR. ERWIN: Thank you.

24 DEFENDANT MCCALL: Thank you.

25 THE COURT: Bring in the jury.

**EXHIBIT D**

## Tommy Brooks - Direct Examination

1 (Jury re-enters the courtroom.)

2 You may call your next witness.

3 MS. DRAWDY: The State calls Dr. Tracey  
4 Lance.

5 THE CLERK: Would you please come forward to  
6 be sworn in. Place your left hand on the Bible and raise  
7 your right.

8 TRACEY LANCE, having been duly sworn,  
9 testified as follows:

10 Thank you. You may be seated. Would you  
11 please state your name for the record.

12 THE WITNESS: Tracey Lance.

13 DIRECT EXAMINATION

14 BY MS. DRAWDY:

15 Q Dr. Lance, are you employed with the Greenville  
16 Hospital System?

17 A Yes.

18 Q What is your capacity?

19 A I'm an emergency room attending.

20 Q Attending what?

21 A Seeing patients and we have residents that we  
22 also teach and the ones that are already have are the  
23 attendings.

24 Q So you have your medical degree?

25 A Yes.

## Tommy Brooks - Direct Examination

1 Q Where did you take your medical degree?

2 A Saint Vincent's Hospital in Cleveland, Ohio.

3 Q When did you receive your medical degree?

4 A 1996.

5 Q Since that time where have you practiced and what  
6 type of medicine?

7 A Emergency medicine and I practice at the  
8 Greenville Health System.

9 Q And are your board certified?

10 A Yes.

11 Q By who?

12 A American Board of Emergency Medicine.

13 Q Briefly give us a little bit more about your  
14 education and experience.

15 A After medical school, I spent a year in Kentucky  
16 doing an internship because I didn't know exactly what  
17 field I wanted to go into. Once I decide I spent three  
18 more years in Dayton Ohio doing a residency in emergency  
19 medicine. I took my boards, passed and been practicing  
20 ever since.

21 Q And how long have you been practicing in  
22 emergency medical total?

23 A 19 years.

24 Q How many years with the Greenville Hospital  
25 System?

## Tommy Brooks - Direct Examination

1 A I was here for three years, left for 11 years and  
2 I've been back since 2010.

3 Q As part of your training did you have to learn  
4 about the properties of prescription drugs and the effects  
5 on the human body?

6 A Yes.

7 Q And do you regularly prescribe prescription  
8 drugs?

9 A Yes.

10 Q Is that why you need to know about that?

11 A Yes.

12 Q Were you also trained in the effects of illicit  
13 drugs on the human body?

14 A Yes.

15 Q Why do you need to know about that?

16 A There are certain medications that we can give a  
17 patient that may interact with illicit drugs and we have  
18 know how they interact.

19 Q Are you familiar with the impairing effects of  
20 prescription drugs?

21 A Yes.

22 Q Are you familiar with the impairing effects of  
23 illicit drugs?

24 A Yes.

25 Q What is a typical shift where you are working now

## Tommy Brooks - Direct Examination

1 at Greenville Memorial?

2 A We work 36 hours a week and that can be spread  
3 out anywhere from 8 to 12 hour shifts.

4 Q And that's year in and year out?

5 A Yes.

6 MS. DRAWDY: Your Honor, we'd like to qualify  
7 Dr. Lance as an expert in the areas of the practice of  
8 medicine and specifically emergency medicine and the  
9 pharmacological properties of prescriptin drugs and  
10 illegal drugs.

11 THE COURT: Any objection.

12 DEFENDANT MCCALL: No objection.

13 THE COURT: She is so qualified.

14 BY MS. DRAWDY.

15 Q Were you employed by GHS on March 4, 2012?

16 A Yes.

17 Q You were working in the ER?

18 A Yes, I was.

19 I'm going to show you what's Exhibit E and ask you if  
20 you could identify what that is?

21 A This is our emergency department record.

22 Q And who is the patient?

23 A Terry McCall.

24 Q For what date?

25 A March 4, 2012.

## Tommy Brooks - Direct Examination

1 Q Is that a record that you have made input into?

2 A Yes.

3 Q Why is that?

4 A This is our emergency department record where  
5 everything we do for them is placed through the computer.

6 Q And what was your capacity that evening with  
7 regard to Mr. McCall?

8 A I was his attending physician.

9 Q So you performed an examination on him?

10 A Yes.

11 Q Can you tell when he arrived?

12 A He was greeted at 19:00.

13 Q At that time what is first done with the patient?

14 A The nurse greets the patient in their triage into  
15 the emergency department.

16 Q Is there any information obtained from the  
17 patient at that point?

18 A Yes, the nurse actually obtains a history of  
19 present illness also.

20 Q Is that something you review before you examine  
21 the patient?

22 A Most of the time, yes.

23 Q And what on this particular occasion were the  
24 complaints that Mr. McCall expressed?

25 A He was complaining of chest and abdominal pain,

## Tommy Brooks - Direct Examination

1 chest wall pain that increased with movement and  
2 inspiration, and mouth pain.

3 Q Did he complain of any type of head injury?

4 A No.

5 Q Did he complain of any type of seizure at that  
6 point?

7 A No.

8 Q Did he say anything about having loss  
9 consciousness?

10 A Yes, he said he denied loss of consciousness.

11 Q After that is done, are vital signs taken?

12 A Yes.

13 Q They were taken that night?

14 A Yes.

15 Q 19:00 he was in the ER at that point?

16 A Yes.

17 Q Was he asked if he loss consciousness?

18 A I think he was because he denied it.

19 Q So is he also asked if he had a past medical  
20 history?

21 A Yes.

22 Q What did he state his past medical history?

23 A Hypglycemia.

24 Q What is that?

25 A Low blood sugar.

## Tommy Brooks - Direct Examination

1 Q Mr. McCall says that's his past history, the low  
2 blood sugar. Did he claim any other history?

3 A Medical history, no.

4 Q Was he asked about surgical history, social  
5 history?

6 A Yes.

7 Q I'm not asking you about all of that but is he  
8 the source of this early information?

9 A Yes.

10 Q Do you also ask about family history?

11 A Yes.

12 Q And the patient himself is the source of this  
13 information?

14 A Correct.

15 Q Did he tell you what his current medications  
16 were?

17 A Yes.

18 Q What did he tell you?

19 A Loritab.

20 Q Something that he is currently taking or  
21 prescribed for him?

22 A Yes.

23 Q What is Loritab?

24 A It's a narcotic mixture codiene and tylenol.

25 Q That's given for what?

## Tommy Brooks - Direct Examination

1 A Pain.

2 Q What sort of effects does that have on the body?

3 A It slows your body down, all of your reflects,  
4 anything you think of you become slower at.

5 Q Now, at some point did he discuss the accident  
6 with you?

7 A Yes.

8 Q Did you note of what he said?

9 A Yes.

10 Q What did he say?

11 A He said he was involved in an accident, he was  
12 the driver and it was headon and the steering wheel was  
13 actually in is lap. It happened just prior to coming to  
14 the emergency department

15 Q Did you check on his neurological concition?

16 A Yes.

17 Q What did you find?

18 A On my physical exam I found that he had no notor  
19 or sensory deficits. His speech was very slow but  
20 appropriate.

21 Q Let's look at your physical exam. If you'll  
22 refer to the notes on Page 2. Did he make a statement  
23 about what he thinks may have made him cross the center  
24 line?

25 A Yes.

## Tommy Brooks - Direct Examination

1 Q What does he think?

2 A He thought his blood sugar may have been low and  
3 made him cross the center line.

4 Q Did you order a lab test to check his blood  
5 sugar?

6 A Yes.

7 Q Can you refer to the record and tell us what that  
8 was?

9 A 96.

10 Q And tell me what a blood sugar level of 96?

11 A That's not a low blood sugar, that's a normal  
12 blood sugar.

13 Q Did you go on to conduct a physical exam of  
14 Mr. McCall, if you would review your notes and tell us  
15 what you discovered starting with the head?

16 A His head was a-traumatic, it looked normal. His  
17 pupils are equal, his (inaudible) where you look up down  
18 and sideways was all normal. He did have his left lower  
19 midline boney cervical tenderness and muscular gender as  
20 bilaterally. His chest was tender anteriorly. It hurt  
21 when you push on it and his breasts sounds were decreased  
22 bilaterally, on both sides. His heart was regular. He  
23 did have some diffuse tenderness in his abdomen which was  
24 mild and seemed to be worse in the upper part of the  
25 abdomen. His back exam was normal, no tenderness. That

## Tommy Brooks - Direct Examination

1 doesn't include the neck. He has a skin tear to this part  
2 of his hand. On his legs, his left fourth toe was  
3 bruised.

4 The rest of his skin exam was normal and he  
5 was alert and oriented.

6 Q Did you see any evidence to indicate that he had  
7 suffered a concussion from the accident?

8 A No.

9 Q And what would you normally look for that you did  
10 not see?

11 A Disoriented and say repetitive things, ask you the  
12 same question over and over again.

13 Q Did he have any head trauma?

14 A No.

15 Q Did you look for it?

16 A Yes.

17 Q Did you see any evidence of a recent seizure  
18 having been suffered by Mr. McCall?

19 A No.

20 Q What would you have expected to see you did not  
21 see?

22 A When people have a seizure, they will regularly  
23 bite their tongue so you will see bite marks on the  
24 tongue. They may or maynot be incontinent, he was not  
25 incontinent. Sometimes they will come in confused and

## Tommy Brooks - Direct Examination

1 will not remember what happened. That was not the case.

2 Q So he told you he had been in a motor vehicle  
3 accident?

4 A Yes.

5 Q And you did not see confusion to the level that  
6 you would have considered him to have possible have a  
7 seizure?

8 A No.

9 Q If he had a seizure in the last couple of hours,  
10 he would have seen those things you just talked about?

11 A Yes.

12 Q And you did not?

13 A No.

14 Q Let me ask you if you'd ordered any other blood  
15 work?

16 A Yes.

17 Q What other blood lab test did you order?

18 A I ordered a CVC blood screen and alcohol level  
19 screen and urine drug screen.

20 Q Why would you do that?

21 A This was a significant accident and he could have  
22 had some significant injuries and as a screening measure  
23 we order those just in case there is something wrong with  
24 him and he has to be admitted to the trauma service.

25 Q Why would being admitted to the trauma service

## Tommy Brooks - Direct Examination

1 make it important to know what he had in his system?

2 A They routinely give specific medications for pain  
3 and sedation and they have to know if there's something in  
4 his system that could interact with what they're going to  
5 give him. They could make him worse if they don't know.

6 Q So that's why you ordered that?

7 A Yes.

8 Q Can you tell what time samples were taken for the  
9 blood and urine for the purpose of those tests?

10 A The labs were drawn at 19:15.

11 Q Is that both?

12 A The urine was collected at 20:45.

13 Q And what was the blood sample used to test?

14 A The blood was used to test the CBC, the alcohol  
15 level.

16 Q Was there any alcohol in his system to the extent  
17 that it would have been medically significant?

18 A No.

19 Q So there was none?

20 A No.

21 Q Was the urine screen show any substances that  
22 would have been medically significant and of interest to  
23 you?

24 A Yes.

25 Q What were those substances?

## Tommy Brooks - Direct Examination

1 A His blood screen was positive for amphetamines,  
2 benzodiazpines, cocaine, marijuana and opioids.

3 DEFENDANT MCCALL: Objection, Your Honor.

4 THE COURT: Thank you. I overule the  
5 objection.

6 BY MS. DRAWDY:

7 Q Is methamphetamine and amphetamine?

8 A Yes.

9 Q Tell us what they do to the body?

10 A They speed you up that's why they call it speed  
11 in the general public, heart rate, make you go really fast  
12 and not think the way you should think because everything  
13 is going to fast to think appropriately.

14 Q What would some of the psychological facts it  
15 would have on the body a person could observe if you gave  
16 a physical examination, such as their eyes?

17 A They would hold their eyes open wide, their  
18 pupils may be bigger than normal.

19 Q Dilated?

20 A Yes. They may look around really quickly fast.  
21 They would not necessarily be able to sit still.

22 Q What is a normal range of pupil size if you re  
23 not under the influence of any type of drug?

24 A Normal is 2 or 3 millimeters.

25 Q If a pupil size was 6 millimeters could that be

## Tommy Brooks - Direct Examination

1 under the influence of methamphetamine?

2 A Yes.

3 Q Did you actually examine those pupil size?

4 A No, they were reactive. Let me look at my notes.

5 Not the size just that they were equal bilaterally.

6 Q What was the next thing that was found in the  
7 urine screen?

8 A Benzodiazapine.

9 Q What are the effects of those drugs?

10 A Those are drugs that we use for anxiety. They  
11 calm them down.

12 Q So much the opposite effect?

13 A Yes.

14 (Due to the technical difficulties, this  
15 portion of the transcript can not be produce.)

16 THE COURT: Alright, ladies and  
17 gentlemen, you have seen all of the evidence that will be  
18 presented in this case. We will proceed to argue and  
19 charge. We will do that in a few minutes. We need to  
20 have a very short charging conference with the attorneys  
21 and talk to them about exactly what it is that I'm going  
22 to charge so they will be able to fashion their closing  
23 arguments to the law that will be charged.

24 So what I anticipate I'm going to ask the  
25 attorenys to argue as expeditiously as possible no more

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Robin Stilwell, Circuit Court Judge

RECEIVED  
SEP 29 2016  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

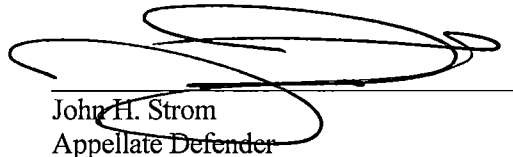
TERRY EDWARD MCCALL,

APPELLANT

APPELLATE CASE NO. 2015-001097

CERTIFICATE OF SERVICE

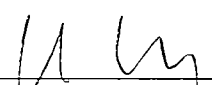
The undersigned attorney hereby certifies that a true copy of the motion to hold appeal in abeyance and motion to remand for reconstruction of the record in the above referenced case has been served upon opposing counsel, J. Benjamin Aplin at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, Esquire and Terry McCall #233236 at Walden Correctional Institution this 29th day of September, 2016.



John H. Strom  
Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me  
this 29th day of September, 2016.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: May 12, 2025



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

September 29, 2016

RECEIVED

SEP 29 2016

SC Court of Appeals

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

Re: The State v. Terry McCall  
Appellate Case No. 2015-001097

Dear Ms. Kitchings:

Enclosed are an original and six copies of the motion to hold appeal in abeyance and motion to remand for reconstruction of the record 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. Terry McCall