

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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RECEIVED

APPEAL FROM CHARLESTON COUNTY FEB 22 2017  
Court of Common Pleas SC Court of Appeals

Diane S. Goodstein, Circuit Court Judge

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Case NO. : 2016-000650

Terrell L. McCoy, 256070 . . . . . Appellant

v.

North Charleston Police Department and Sgt. Thomas Dechard,  
of which, North Charleston police Department is, . . . Respondent

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SUPPLEMENTAL RECORD

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Terrell McCoy, 256070  
LCI Edisto SMU-A118  
P.O. BOX 205  
Ridgeville, SC 29472

~~SC 2016~~  
Sandra J. Senn, esquire  
Kevin M. De Antonio, esquire  
Robin Lilley Jackson  
Senn Legal  
P.O. BOX 12279  
Charleston, SC 29412

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APPENDIX

Sandra J. Senn, Esquire  
Kevin M. De'Antonio  
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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TERRELL MCCOY, #256070,

Plaintiff,

v.

NORTH CHARLESTON POLICE  
DEPARTMENT AND SERGEANT  
THOMAS DECKARD,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2014-CP-10-7706

**DEFENDANTS' MOTION  
TO DISMISS**

**FILED**  
2015 MAR 30 PM 3:38  
JULIE J. ARMSTRONG  
CLERK OF COURT

Before the court are the defendants, moving to dismiss the plaintiff's Complaint which alleges that in 2006, exculpatory evidence was destroyed by the North Charleston Police Department and Sergeant Thomas Deckard<sup>1</sup> in an effort to improperly convict him. The plaintiff's Complaint has been untimely filed and should be dismissed pursuant to the statute of limitations. Further, Sergeant Deckard should be dismissed as he is not a proper defendant pursuant to the South Carolina Tort Claims Act ("TCA"), § 15-78-10, *et seq.*

The plaintiff has brought this action pursuant to the TCA, which states that "any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered." S.C. Code Ann. § 15-78-110.

In this case, the plaintiff claims that he was arrested on March 27, 2006, and appointed Lorelle Proctor as his public defender. The Complaint further alleges that Prosecutors Greg Voigt and Burns Wetmore both worked on the case for the solicitor's office.

The plaintiff complains that exculpatory evidence (a 911 tape) was not turned over to his

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<sup>1</sup> As of the date of this motion, Sergeant Thomas Deckard has not been personally served with this lawsuit.

3/20

3 Jack

attorney because it was destroyed before production. However, the complaint further alleges that through recent Freedom of Information Act requests, he believes that the tape was destroyed on June 25, 2006, which was more than two months after his lawyer had apparently requested the 911 tape.

Thus, the plaintiff now believes that he can pinpoint a date on which the 911 tape was destroyed. Such is not a salient fact. From the four corners of his complaint, it is revealed that he knew that the police and prosecutors did not have a 911 tape to present to his attorney many years ago. And, even assuming that the plaintiff's complaint is true, it would appear that both he and his attorney actually argued motions regarding the 911 tape prior to his conviction. On February 2, 2009, the plaintiff claims that he argued before the Honorable Roger Young that he should be entitled to the 911 tape and at that point the solicitor's office told the judge that they did not have a 911 tape and that it had been destroyed apparently as part of a retention schedule.

Inasmuch as the plaintiff and his public defender argued for the production of the 911 tape at trial, clearly the plaintiff knew that a piece of evidence was not going to be produced by February 2, 2009. Therefore, this complaint is untimely as being filed outside the two-year statute of limitations.

Further, pursuant to the TCA:

**On or after January 1, 1989, a person when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant **only the agency or political subdivision for which the employee was acting ... in the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.****

S.C. Code Ann. § 15-78-70(c) (emphasis added); *see also Proveaux v. Med. Univ. of S.C.*, 326

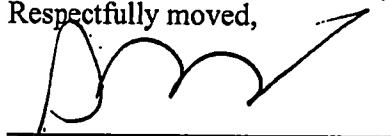
S.C. 28, 482 S.E.2d 774 (1997) (granting summary judgment to hospital employee based on his

being immune from suit under S.C. Code Ann. § 15-78-70(c)).

At all times relevant to the allegations in the Complaint, Sergeant Deckard was an employee of the North Charleston Police Department acting in his capacity as a detective. Therefore, Sergeant Deckard is not a proper defendant and should be dismissed from this action.

Wherefore, for the foregoing reasons, the Complaint should be dismissed, and in the alternative and at the very least, Sergeant Deckard should be dismissed from this suit.

Respectfully moved,



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Attorney for the Defendants

March 27, 2015  
Charleston, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEA  
For the Ninth Judicial Circuit  
Civil action No: 13-CP-10-10870

Terrell McCoy,

Plaintiff,

v.

~~City~~ City of North Charleston,

Defendants

COMPLAINT

(Jury Trial Demand)

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2013 NOV 22 AM 10:56

FILED

I, the pro se Plaintiff, Terrell McCoy, complaining of the Defendants, above named, States as follows:

STATEMENT OF Claim

- (1) During the early month of September 2013, I mailed one letter to North Charleston Police Department and the City of North Charleston requesting for documents in connection with the retention period for 911 calls, (and radio transmission) made at the North Charleston Police Department during the year of 2006 Pursuant to the Freedom of Information Act S.C. Code Ann. §§ 30-4-10 thru-165.
- (2) I also requested for the unedited copy, CAD OPERATION REPORT, dispatch log Number. 2006036162. This request was forward to Charleston County Consolidated 9-1-1 Center. A different agency from NCPD.
- (3) Before all these request were made, I made a request seeking information on a dispatcher that work for North Charleston Police Department in March of 2006. The information that I seek pertain to my criminal case. Warrant No. F969254. This request was made July 12, 2013. The request was answered and the documents I seek, were sent to me on July 23, 2013. In this request, I requested for all the name of police officers, that work for the North Charleston Police Department, last names from A-F.
- (4) During this time I was seeking for a dispatcher name Jenie Fowler, who answered a 911 call in my criminal case. When her name did not appear in the documents the City of

Continue from page 1

North Charleston provided, I made another request asking did the North Charleston Police Department have someone working as a dispatcher in 2009 by the name of J. Fowler and this request was answered on August 2, 2013.

5: A female name. Beth Woodall replied to my request on August 2, 2013 and stated the following:

I am in receipt of your second FOIA request regarding the identification of a North Charleston Police officer named James or J. Fowler. The documents I previously sent to you indicated that there was no active officer named Fowler in 2009. However, in speaking with a clerk from Human Relations, I learned that dispatchers have a different classification. While they technically fall under the North Charleston Police Department, they are considered civilian employees. We did have a female dispatcher name Jenie Fowler who was employed in 2009. She did not appear in the first search because that search was for police officers only and did not include any civilian employees. I hope this information is helpful to you. Ms. Fowler is no longer an employee of the North Charleston Police Department. She is currently employed by Charleston County in the Consolidated Dispatch Center.

(6) When I made my third request in September of 2013, requesting for documents in connection with the retention period for 911 calls, (and radio transmission) made at the North Charleston Police Department during the year of 2006 pursuant to the FOIA, my request was forwarded to the Charleston County Consolidated 9-1-1 Center. When I requested the unedited copy, CAD OPERATION REPORT, dispatch log No. 2006036162, and documents concerning the procedures a 911 dispatch caller must follow when taking a 911 call from a civilian during emergencies, my request was sent to Charleston County Consolidated 9-1-1 center. A different agency from North Charleston Police Department according to Beth Woodall, because she stated Jenie Fowler no longer work for NCPD, and that she is employed by Charleston County Consolidated 9-1-1 Center.

(7) When I did not receive a response from North Charleston Police Department or City of North Charleston in a timely matter define in FOIA 30-4-10 thru-165

Continue from page 2

I sent an FOIA appeal to the City of North Charleston Legal Department on September 26, 2013. More than 30 days have elapsed and I still have not received requested documents.

8. According to the FOIA 30-4-30, which is the "legislative intent" it states the following:

§§ 30-4-30 Right to Inspect or copy Public records; fees; Notification as to Public Availability of records; presumption upon failure to give notice; Records to be Available when requestor appears in person.

(C) Each Public Body, upon written Request for Records made under this Chapter, shall within fifteen days (excepting Saturdays, Sundays, and Legal Public Holidays) of the receipt of any such request notify the person making such request of its determination and the reasons there of. Such determination shall constitute the final opinion of the public body as to the availability (Public) of the requested Public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the documents within the fifteen days allowed herein the request must be considered approved.

(9) The defendants have violated this act when it failed to reply or send the requested public record to me pursuant to the Freedom of Information Act.

### RELIEF

DECLARATORY Judgment & Injunctive Relief

(10) Pursuant to S.C. Code Ann. §§ 30-4-100. I states the following:

(a) Any citizen of the state may apply to the circuit

Continue from page 3

for either or both a Declaratory Judgment and Injunctive Relief to enforce the provisions of this Chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a Public Vote in Public Session whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this Chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(1) I also request that the requested documents be furnished to me and/or ;

REASONABLE ATTORNEY FEES/COST OF LITIGATION

30-4-100

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable Attorney Fees and other cost of litigation. If such person or Entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof

10-29-13

15 Jenele McCoy  
PCID 0X19  
430 Oaklawn rd  
Pelzer, SC 29669



1 (May 7, 2015.)

2 THE COURT: All right. We got Terrell McCoy  
3 versus North Charleston police department.

4 Mr. McCoy, how are you doing today?

5 THE PLAINTIFF: Good. How are you doing?

6 THE COURT: Nice to see you.

7 THE PLAINTIFF: Thank you, and you too.

8 THE COURT: All right. Tell me briefly  
9 what -- this is a motion to dismiss?

10 MR. DeANTONIO: A motion to dismiss based on  
11 the statute of limitations.

12 THE COURT: All right. For the record, state  
13 who is here --

14 MR. DeANTONIO: Chet DeAntonio. This is  
15 Robin Jackson on behalf of the defendants.

16 THE COURT: Okay. It's a motion to dismiss  
17 on the statute?

18 MR. DeANTONIO: Yes, sir. He filed the Tort  
19 Claims Act alleging that grossly negligently the  
20 defendants failed to produce, I guess, exculpatory  
21 evidence at his criminal trial. He was convicted in  
22 February of 2009.

23 THE COURT: What have they failed to produce  
24 to you?

25 THE PLAINTIFF: Sir, it's not what they

1 failed to produce, it's what was destroyed in my case. I  
2 would like to state that the defendant's motion to  
3 dismiss is without merit.

4 THE COURT: Well, let me hear him first, and  
5 I'll listen to you, okay? Let me hear you on your  
6 motion.

7 MR. DeANTONIO: The solicitor failed to  
8 produce a 911 tape, but I guess this suit is against the  
9 North Charleston police department and the detective.

10 So at the retrial in 2009 where he was  
11 convicted, they had a motions hearing where he brought up  
12 the issue that they had asked for the 911 tape that  
13 hadn't been produced, that -- the solicitor said he had  
14 never seen it and that it was probably destroyed because  
15 it had been over three years.

16 So at that time, in 2009, he was aware that  
17 there was a tape that was made and was exculpatory and  
18 that wasn't being produced, so I would argue the statute  
19 of limitations began to run February 2009 when he was  
20 convicted, so this claim was brought six years later.

21 THE COURT: When was he tried?

22 MR. DeANTONIO: February of 2009. That was a  
23 retrial. The first trial ended in a hung jury in --

24 THE COURT: February when, 2000 when?

25 MR. DeANTONIO: 2009.

1 THE COURT: What date in February?

2 MR. DeANTONIO: The 6th.

3 THE COURT: February 6, 2009 was the trial?

4 MR. DeANTONIO: Yes, Your Honor. That was  
5 the conviction date.

6 THE COURT: All right. When did he file the  
7 lawsuit?

8 MR. DeANTONIO: February 18th, 2015.

9 THE COURT: When did he serve it?

10 MR. DeANTONIO: I know the detective was  
11 served later, on April 1st. I know the defendant was  
12 served on --

13 THE COURT: April 1st, 2015?

14 MR. DeANTONIO: It shows the individual  
15 officer. I know the agency was served prior to that.

16 THE COURT: So sometime prior to April 15th  
17 the agency had been severed; is that correct?

18 MR. DeANTONIO: Yes.

19 THE COURT: So you're saying February 6th,  
20 2009 would be the -- I guess the latest, is that correct,  
21 the date that he was convicted?

22 MR. DeANTONIO: That it began, yes.

23 THE COURT: Did he make the request during  
24 that trial for that 911 tape? Where did it come up  
25 before? I've seen you in here before talking about the

1 911 tape.

2 THE PLAINTIFF: Actually, when I first came  
3 up before you, I filed a lawsuit on the Freedom of  
4 Information Act.

5 THE COURT: That's right. Freedom of  
6 Information Act. When did you file that lawsuit?

7 THE PLAINTIFF: That was filed in 2000 --

8 THE COURT: You tried to get it under FOI.  
9 They said they didn't have it, so I dismissed your  
10 lawsuit, if I remember correctly, right?

11 THE PLAINTIFF: You made them produce certain  
12 evidence in my lawsuit, and after I received that  
13 evidence, the lawsuit was dismissed, but I think that  
14 action was filed in -- I'm trying to find it right now --

15 THE COURT: Are you familiar with that one?

16 MR. DeANTONIO: Yeah.

17 THE PLAINTIFF: It was filed in 2013.

18 THE COURT: 2013. All right. And what did  
19 he sue on this time? What was the cause of action?

20 MR. DeANTONIO: Just gross negligence under  
21 the Tort Claims Act against the police department.

22 THE COURT: Because they failed to produce  
23 the 911 tape?

24 MR. DeANTONIO: I guess for destroying the  
25 evidence.

1 THE COURT: Okay. How does he allege he was  
2 damaged?

3 MR. DeANTONIO: Well, he said -- I guess the  
4 disclosure would have been useful at the trial. It could  
5 have exonerated him, and he's basically saying that the  
6 911 tape would have rebutted the testimony of one of the  
7 State's witnesses, and because of that --

8 THE COURT: Was it available at the first  
9 trial?

10 MR. DeANTONIO: It was not. It was never  
11 produced at all.

12 THE COURT: All right. Mr. McCoy, there's a  
13 one-year statute of limitation on the state Tort Claims  
14 Act.

15 THE PLAINTIFF: If it may please the Court, I  
16 would like to state that the defendant's motion to  
17 dismiss is without merit.

18 First, the defendants state that the civil  
19 action is disqualified by the statute of limitations  
20 South Carolina Tort Action 15-78-10.

21 This is not true, Your Honor. I was  
22 convicted February 6, 2009, and my standby counsel filed  
23 a timely appeal. My appeal was denied by the Court of  
24 Appeals.

25 THE COURT: What did you appeal on,

1 Mr. McCoy, do you remember?

2 THE PLAINTIFF: Yes, sir. It was that I  
3 can't knowingly and intelligently waive my right to  
4 effective counsel. I represented myself in that trial.

5 THE COURT: And the Court of Appeals denied  
6 the direct appeal?

7 THE PLAINTIFF: It was denied in November  
8 2011. My appellate counsel filed a petition for  
9 rehearing, which was denied on December 19, 2011. He  
10 then filed a petition for writ of certiorari in the South  
11 Carolina Supreme Court, which was denied on March 6,  
12 2013.

13 THE COURT: March what?

14 THE PLAINTIFF: March 6, 2013. The remitter  
15 was issued to a lower Court on March 8, 2013, affirming  
16 my loss of liberty, loss of employment, loss of  
17 reputation, et cetera. I filed the civil action against  
18 the defendants in 2014.

19 Your Honor, the defendants also allege that I  
20 was aware of --

21 THE COURT: Hold on a second.

22 THE PLAINTIFF: I'm sorry.

23 THE COURT: All right. Go ahead.

24 THE PLAINTIFF: The defendant also alleged I  
25 was aware of the destruction of the 911 tape recording

1 during my trial in February of 2009. This is not true,  
2 and the defendants cannot produce any evidence today  
3 which will show me or my standby counsel, Lorene Proctor,  
4 was aware of the destruction of the 911 tape which could  
5 have exonerated me at my trial.

6 Your Honor, from reading the defendant's  
7 motion to dismiss, it seems that they're saying that I  
8 was aware of the destruction of the 911 tape recording as  
9 what I claim as my lawful pursuit under South Carolina  
10 code 15-70-30(f). This is not true.

11 The destruction of the 911 tape recording by  
12 the defendant would be an essential element in the  
13 negligence action, which are duty of care owed by the  
14 defendants to the plaintiff, the breach of that duty by a  
15 negligent act or omission, and damage would be caused by  
16 a breach of duty.

17 Negligence, gross negligence, intentional,  
18 conscious failure to do something --

19 THE COURT: All that may be true, Mr. McCoy,  
20 but you still got a time limit on filing it.

21 THE PLAINTIFF: But I said the remitter was  
22 issued to the lower Court on March 8, 2013. The civil  
23 action was brought --

24 THE COURT: Did the tape come up in the  
25 direct appeal?

1 THE PLAINTIFF: No, sir.

2 THE COURT: Did you file a PCR?

3 THE PLAINTIFF: Filed a PCR, yes.

4 THE COURT: The grounds for the PCR was what?

5 THE PLAINTIFF: That -- I had got so many  
6 grounds.

7 THE COURT: Well, concerning that tape, was  
8 that raised on the PCR?

9 THE PLAINTIFF: That's one of my issues.

10 THE COURT: What is the status of your PCR?

11 THE PLAINTIFF: That's pending.

12 THE COURT: Has it been heard?

13 THE PLAINTIFF: Not yet, sir.

14 THE COURT: All right. So you don't have a  
15 hearing date yet.

16 THE PLAINTIFF: No, sir.

17 THE COURT: What did you put in the  
18 PCR concerning the 911 tape not being produced at trial,  
19 or did you?

20 THE PLAINTIFF: I filed my PCR like five days  
21 after the remittitur was handed down to the lower Court  
22 in 2013.

23 THE COURT: What did you say? You got a copy  
24 of your application for PCR?

25 THE PLAINTIFF: Yes, sir.

1 THE COURT: Hand it up to the bailiff and  
2 then hand it to me.

3 THE PLAINTIFF: I didn't actually find out  
4 that the 911 tape was destroyed until I filed a lawsuit,  
5 and I received my interrogatories on June 20, 2014.

6 THE COURT: When did you find out it was  
7 destroyed?

8 THE PLAINTIFF: June 20, 2014 from the city  
9 of North Charleston.

10 THE COURT: June 20, 2014?

11 THE PLAINTIFF: Yes, sir.

12 THE COURT: Was that the FOI hearing?

13 THE PLAINTIFF: Yes, sir, during the  
14 interrogatory. I got the evidence right here if you want  
15 to see it.

16 THE COURT: What were you charged with, Mr.  
17 McCoy?

18 THE PLAINTIFF: Murder.

19 THE COURT: Okay. They convict you of  
20 murder?

21 THE PLAINTIFF: Yes, sir.

22 THE COURT: Somebody been appointed to  
23 represent you on a PCR?

24 THE PLAINTIFF: Yes, sir. I have -- Rodney  
25 Davis is representing me in that case.

1 THE COURT: Okay. I don't remember what you  
2 said about how you felt like this 911 tape would clear  
3 you. What -- you told me an FOI hearing, but I don't  
4 know what you said.

5 THE PLAINTIFF: If you would like me to  
6 explain --

7 THE COURT: Just tell me what you think the  
8 911 tape had to do with the trial.

9 THE PLAINTIFF: The 911 tape -- well, it  
10 would have disclosed the name of a witness who called 911  
11 and reported what she seen under the excited utterance.  
12 I don't know what rule it would fall under, but she  
13 called 911 and stated that the guy who got shot got shot  
14 outside first, and he ran to an apartment and he banged  
15 on the door, and he got shot gun inside his house.

16 But the witness who testified against me, she  
17 gave two statements first. She gave two statements, then  
18 she gave another statement to the police department. In  
19 her first statement, she said me, along with two other  
20 guys, was inside her house and we was drinking, doing  
21 drugs along with her and that me and this guy got into an  
22 argument and --

23 THE COURT: Well, did she pick you out as the  
24 shooter?

25 THE PLAINTIFF: No. She states that -- she

1 identified me as being her boyfriend, Travis Johnson's,  
2 brother. I don't have no brother named Travis Johnson,  
3 and that's how the police is in it. She said Sleezie,  
4 saying that I was her boyfriend, Travis Johnson's,  
5 brother. I did not have no brother named Travis Johnson.  
6 So the warrant that they have --

7 THE COURT: Well, how would that 911 tape  
8 have made any difference whether you were involved in the  
9 shooting or not?

10 THE PLAINTIFF: Because the evidence at the  
11 crime scene, it showed that the door had been kicked  
12 open. The crime scene pictures show photos of the door  
13 crack open, photos of the blood all over the floor, but  
14 she stated that -- the witness, the State witness that  
15 testified against me, she said that we was all inside the  
16 house and I shot him inside the house and ran out the  
17 house.

18 THE COURT: Okay. All right. Thank you. I  
19 just couldn't remember what you told me at the last  
20 hearing.

21 THE PLAINTIFF: Also, Your Honor. There was  
22 DNA evidence in that case. I just submitted my claim  
23 form on March -- I mean, on April 25th because -- also  
24 for the same thing, because there was DNA evidence that  
25 was found at the crime scene. Detective Angela Bunker

1 said she couldn't test it and she didn't collect the  
2 evidence, specific evidence, 'cause they wasn't trained  
3 back in 2008, 2006, to collect evidence at the crime  
4 scene, so therefore the blood that was on the window, on  
5 the bedroom window, which was blood smeared into that  
6 room --

7 THE COURT: I understand, but that's -- the  
8 issue is not what your cause of actions are, the issue is  
9 whether you submitted it timely, okay?

10 THE PLAINTIFF: I just amended my complaint.  
11 I amended my complaint.

12 THE COURT: Well, Mr. McCoy, you either had  
13 to start within the time period or you don't. The  
14 question in your case is when does the time start  
15 running, okay?

16 THE PLAINTIFF: March 8, 2013.

17 THE COURT: I know that's your position.  
18 Their position is much earlier, okay?

19 THE PLAINTIFF: Right.

20 THE COURT: Okay. Let me read this. You're  
21 too verbose, but I'm reading it.

22 All right. I've scanned it real quick. Did  
23 you raise the issue about the destroyed evidence in here?

24 THE PLAINTIFF: They destroyed the  
25 construction of the blood DNA and --

1 THE COURT: But you didn't mention the tape?

2 THE PLAINTIFF: Because I didn't know that  
3 the tape was destroyed until June 20th of 2014 when I  
4 filed the FOI.

5 THE COURT: Bailiff, give this back to  
6 Mr. McCoy. All-right. Mr. McCoy, when did you first  
7 know about the tape because you filed a FOI to get the  
8 tape.

9 THE PLAINTIFF: No, sir. I didn't file an  
10 FOI to get the tape. I filed the FOI to get information  
11 from the dispatcher Gene Fowler because they told me  
12 there was two Gene Fowlers that worked for the North  
13 Charleston police department at the time I filed my  
14 subpoena. I have that also. I have the document if you  
15 want to see that too.

16 Beth Willard, she's with the city of North  
17 Charleston, I asked for a printout of all the officers  
18 who work for North Charleston department with that same  
19 name and last name. They told me that's when they told  
20 me, boom, we only have one person that works named Gene  
21 Fowler; therefore, they lied to me. They lied they're  
22 me, so therefore she's in contempt of Court because she  
23 never came they're my trial.

24 Also, during my interrogatories, I asked the  
25 question, and then during my interrogatories, I asked,

1 well, can you please tell me the date when the 911  
2 tape -- first I asked him was the 911 tape -- you want a  
3 copy of that?

4 THE COURT: I don't need it. Just tell me.

5 THE PLAINTIFF: I asked them, was the 911  
6 tape destroyed? They said yes. And I said, could you  
7 please tell me the date, the month, the date, and the  
8 year --

9 THE COURT: So absent the interrogatories --  
10 you put in an interrogatory was the tape destroyed?

11 THE PLAINTIFF: Asked them was the tape  
12 destroyed.

13 THE COURT: And the interrogatory said it  
14 did.

15 THE PLAINTIFF: Yes, sir. And then I asked  
16 them, can you please tell me the month, the date, and the  
17 year?

18 THE COURT: What was the date you found that  
19 out on interrogatories?

20 THE PLAINTIFF: June 20th of 2014.

21 THE COURT: That's when you got the  
22 interrogatories?

23 THE PLAINTIFF: Yes, sir. I got it right  
24 here if you want they're see it.

25 THE COURT: All right. } I'll take your word

1 for it. All right. Anything else you want they're tell  
2 me?

3 THE PLAINTIFF: They told me the month, the  
4 date, and the year it was destroyed, June 21, 2011.

5 THE COURT: All right.

6 Let me hear you. When do you think you first  
7 found out about the tape?

8 MR. DeANTONIO: Well, the public defender  
9 requested and received the Rule 5 production in the  
10 criminal case sometime between April --

11 THE COURT: In the Rule 5, did it say there  
12 was a tape available?

13 MR. DeANTONIO: There was a summary of what  
14 the 911 tape said, so that's when they became aware that  
15 there was a tape and they requested they're get a copy of  
16 the actual recording.

17 THE COURT: Did the public defender request a  
18 copy of it?

19 MR. DeANTONIO: The complaint said he  
20 requested a copy from the solicitor's office. Whether  
21 that information got back to the police department, who's  
22 the named defendant in this case, I'm not exactly sure.

23 THE COURT: But, anyhow, the type was never  
24 produced under Rule 5 --

25 MR. DeANTONIO: Correct.

1 THE COURT: -- to your knowledge?

2 MR. DeANTONIO: To my knowledge.

3 THE COURT: Okay. You don't know if he knew  
4 that or not?

5 MR. DeANTONIO: He knew in 2008 that he  
6 didn't have the tape, that it existed. They had been  
7 asking since 2006. He knew at some point there was a  
8 tape. At the motion hearing at the retrial where they  
9 did argue a motion outside the jury, solely on this  
10 issue, he heard from the solicitor, I believe.

11 The complaint says that Mr. Wetmore, the  
12 solicitor, told the judge he never heard the 911 tape and  
13 that the tape recording is kept for a certain period and  
14 then they're destroyed, so this tape presumably was just  
15 taped over.

16 THE COURT: Was the motion hearing for the  
17 State they're produce the tape?

18 MR. DeANTONIO: At the retrial in February of  
19 2009.

20 THE COURT: All right. So his attorney made  
21 a motion for the State they're produce the 911 tape, had  
22 an in camera hearing?

23 MR. DeANTONIO: Correct. At that trial he  
24 did represent himself. The public defender was sitting  
25 with him.

1 THE COURT: So Mr. McCoy asked for the 911  
2 type in that hearing in camera?

3 MR. DeANTONIO: Correct.

4 THE COURT: And what was the judge's ruling?

5 MR. DeANTONIO: I do not have that  
6 information, just limited complaint.

7 THE COURT: Well, did the judge order the  
8 tape produced or not? Was Mr. McCoy told it was  
9 destroyed at that time or not?

10 MR. DeANTONIO: I believe the solicitor said  
11 it had been destroyed. He had never seen it.

12 THE COURT: Well, did the solicitor say that,  
13 and what did the judge order?

14 MR. DeANTONIO: I'm just working off the  
15 complaint. I don't know exactly what the solicitor --

16 THE COURT: You're working off of his  
17 complaint?

18 MR. DeANTONIO: Correct.

19 THE COURT: All right. I'm trying to find  
20 out when he first knew about the destroyed type. I know  
21 he knew about it when he was before me on the FOI, 'cause  
22 I ordered it produced, and we had a conversation. I  
23 don't know who the attorneys were, and they produced  
24 certain things.

25 And at that point in time, in open court,

1 whoever was representing the city said that it had been  
2 destroyed. Now, I know that he knew it at that time.  
3 I'm trying to determine when he actually knew it was  
4 destroyed. So I need to know what happened in that in  
5 camera hearing.

6 MR. DeANTONIO: He says in the complaint that  
7 he was told by the solicitor at that motion hearing that  
8 it had been destroyed.

9 THE COURT: That's in the transcript or in  
10 his complaint?

11 MR. DeANTONIO: In the complaint.

12 THE COURT: Is that right, Mr. McCoy? Is  
13 that in your complaint? I'm going to have to read it.

14 THE PLAINTIFF: You can read it, but I happen  
15 to have a copy of my transcript. It was not a motion  
16 hearing for the 911 tape. It was a motion hearing  
17 because we subpoenaed the dispatcher, Gene Fowler, and  
18 during that hearing, Judge Honorable Roger Young was,  
19 like, well, being that she's here today, he asked dude --  
20 he asked the solicitor, do y'all -- being that she's not  
21 here, do y'all have a 911 tape?

22 And Mr. Burns Wetmore, he was, like, well, I  
23 never heard of a 911 tape. I don't know if it's here or  
24 not.

25 THE COURT: Is that what's in the transcript?

1 THE PLAINTIFF: Yes, sir.

2 THE COURT: You got it in the transcript?

3 THE PLAINTIFF: Yes, sir.

4 THE COURT: You got the page and line?

5 THE PLAINTIFF: Yes, sir.

6 THE COURT: Give it to the bailiff. Let me  
7 look at the page and line.

8 THE PLAINTIFF: Start from 630, 631, to page  
9 634.

10 THE COURT: See, he's well prepared. Y'all  
11 aren't.

12 MS. JACKSON: Your Honor, this is simply a  
13 complaint and motion to dismiss.

14 THE COURT: I understand.

15 Having read the transcript from the second  
16 trial during the in camera hearing, I think it's pretty  
17 clear on page 635, line 25:

18 The Court: From what I understand, it  
19 doesn't exist. Ms. Proctor said back when she used to  
20 represent you her office tried to obtain it and were  
21 informed it didn't exist, so, again, it's one of those  
22 deals where if you had it, I would let you play it;  
23 however, it doesn't exist. I can't create it, okay?

24 Mr. McCoy's answer is: Yes, sir.

25 Now, what was the date of the trial at that

1 time? I'm going to find that Mr. McCoy knew that the  
2 tape had been -- not necessarily destroyed, but knew it  
3 did not exist -- I'll give this back to Mr. McCoy --  
4 according to the transcript of the trial, and I'll grant  
5 your motion to file outside the statute of limitations.

6 Thank you so very much.

7 MR. DeANTONIO: Thank you, Your Honor.

8 MS. JACKSON: Your Honor, would you like us  
9 to submit an order?

10 THE COURT: Yeah, and please put the language  
11 in that I just quoted.

12 THE PLAINTIFF: Saying what page?

13 THE COURT: Hand me the transcript, and I'll  
14 get a copy of that for you.

15 THE PLAINTIFF: My argument is that they  
16 destroyed it.

17 THE COURT: Well, it was -- you knew it  
18 wasn't available. Whether it was destroyed or not, it  
19 wasn't available.

20 THE PLAINTIFF: That's not my argument, Your  
21 Honor. That's a motion to produce. I didn't know that  
22 they destroyed it.

23 THE COURT: Well, you'll have to take that up  
24 on a PCR, okay? This lawsuit is different from a PCR.  
25 All right?

1 Mr. McCoy, hang on. I'll give you a copy.

2 THE PLAINTIFF: I would like to appeal.

3 THE COURT: That's fine. You're welcome to  
4 do that, okay?

5 THE PLAINTIFF: And I would like to get a  
6 copy of the transcript.

7 THE COURT: Okay. That's fine.

8 THE PLAINTIFF: But you're saying -- I don't  
9 understand. I'm not really understanding what you're  
10 saying.

11 THE COURT: Mr. McCoy, don't play like you  
12 don't understand.

13 THE PLAINTIFF: This is my life and liberty.

14 THE COURT: You've done a good job. I  
15 understand it's your life and liberty. You've been  
16 before me two or three times. I've been impressed with  
17 how prepared you are. Don't sit there and act dumb,  
18 okay, 'cause you're not. You're very smart. You know  
19 what's going on.

20 What I said, it's very clear in the  
21 transcript that you knew the tape did not exist at your  
22 second trial. At that point in time, the statute started  
23 running as far as this lawsuit is concerned.

24 THE PLAINTIFF: They didn't produce it at my  
25 trial. I didn't know that they destroyed it. There is

1 nowhere in that transcript saying that the 911 tape was  
2 destroyed.

3 THE COURT: Okay. Well, we're talking about  
4 a play on words. You knew it was not available. I'm not  
5 going to argue with you.

6 THE PLAINTIFF: I'm just going to appeal --

7 THE COURT: Please appeal and have a good  
8 life, okay? Thank you very much. Hang on and I'll bring  
9 your -- get your copy back to you, okay?

10 THE PLAINTIFF: So you're saying I knew it  
11 was destroyed in February? That's crazy, man.

12 I appreciate it. I'll file an appeal. I  
13 been through this before.

14 THE COURT: I'm sorry?

15 THE PLAINTIFF: I been through this before.

16 THE COURT: Okay. You sure have.

17 Thank y'all very much.

18 - - -

19 (Whereupon, the proceedings were concluded.)

20 - - -

21

22

23

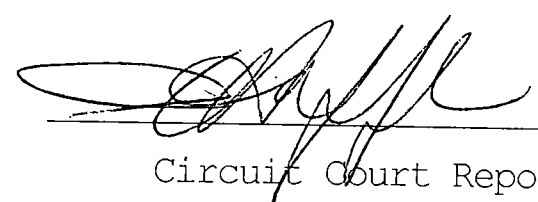
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25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 7th of May 2015.

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

July 22, 2015

  
\_\_\_\_\_  
Circuit Court Reporter

Proof of SERVICE

I, Terrell McCay, hereby declare that on February 15, 2017 I personally placed a copy of Appellate's Supplemental Record inside a prepaid stamp envelope to be mailed by U.S. Mail to the following address.

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February 15, 2017

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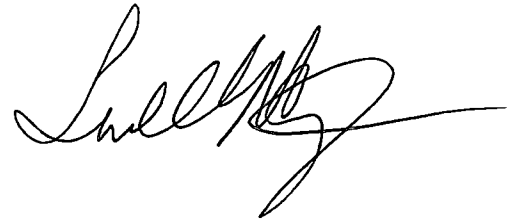
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SC Court of Appeals

RE: TERRELL MCCOY, 256070 V. NCPA, et al in  
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Dear Clerk, Enclosed please find a copy of the Appellate's Supplemental Record in connection with the above reference case. I have also enclosed a copy of Proof Service as Evidence of Service upon you. Thanks



Sandra J. Senn  
Kevin M. DeAntonio  
Robin L. Hey Jackson

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