

THE STATE OF SOUTH CAROLINA
IN the Court of Appeals

RECEIVED

OCT 28 2016

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No.: 2016-000650

Terrell L. McCoy, 256070 Appellant

v.

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

RECORD ON APPEAL

Terrell McCoy
LCI Ed. 12
P.O. Box 205
Ridgelyville SC 29472

Sandra J. Senn, esquire
Kevin M. DeAntonion, esquire
Robin Lilly Jackson
Senn Legal
P.O. Box 12279
charleston SC 29412

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON
COURT of Common Pleas

RECEIVED

OCT 11 2016

SC Court of Appeals

Diane Goodstein, Circuit Court Judge

Case No. 14-CP-10-7706

Terrell L. McCoy, o o o o o o o o o o Appellant

v.

North Charleston Police Department, Sergeant Thomas
Deckard, - - - - - Respondent

RECORD ON APPEAL

Terrell McCoy, 256070
LePier Correctional Inst.
P.O. BOX 205
Ridgeville, SC 29472

Robin L. Jackson
3 Wesley Drive
P.O. BOX 12279
Charleston, SC 29423

INDEX

Order of May 13, 2015 3-5

Order of February 23, 2016 6

Complaint 7-16

Testimony

Terrell McCoy 17-67

Kevin De Antonio 17-67

Robin Jackson 17-67

Plaintiff's Exhibits

1. 68-79

2. 80

3. 81-86

~~.....~~

Certificate of Appellant 87

Exhibit 7

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
CIVIL ACTION NO.: 2014-CP-10-7706

ORDER

2015 MAY 14 PM 12:12
JULIE J. ARMSTRONG
CLERK OF COURT
FILED

This matter came before the Court on a Motion to Dismiss filed by North Charleston Police Department and Sergeant Thomas Decker ("Defendants"). The Court heard arguments on the Motion on May 7, 2015. Present at the hearing were Kevin DeAntonio and Robin Jackson for the Defendants and Terrell McCoy, *pro se* ("Plaintiff"). After hearing arguments and reviewing the filed Complaint and Motion to Dismiss, this Court hereby grants Defendants' Motion to Dismiss.

Plaintiff filed this action against the governmental defendants pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 to -220 ("TCA"), which "is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code Ann. § 15-78-200. "[A]ny action brought pursuant to [the TCA] 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.

The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question. *Hackworth v. Greenville Cnty.*, 371 S.C. 99, 103, 637 S.E.2d 320, 322 (Ct. App. 2006).

In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

Young v. S.C. Dep't of Corrs., 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

The Complaint alleges that Defendants withheld and ultimately destroyed potentially exculpatory evidence—a 911 recording—related to Plaintiff's criminal trial. According to the Complaint, Plaintiff was convicted on February 6, 2009. The Complaint further states that, during an *in camera* motion hearing during the trial, Plaintiff argued that the 911 tape should have been turned over and that his public defender had requested the tape from the Solicitor's Office three years prior. The Complaint then states that the Solicitor trying the case explained to the trial judge that the recording would have been kept for a certain period of time and then it would have been destroyed. Thus, it is evident from the Complaint that Plaintiff was aware at his February 2009 trial that the 911 tape no longer existed. Therefore, any cause of action arising out of the destruction of the 911 tape accrued at that time.

At the May 7, 2015, hearing on Defendants' Motion to Dismiss, the Court reviewed the transcript of the February 2009 motion hearing in order to verify that Plaintiff was, in fact, put on notice at that hearing that the tape no longer existed. The transcript shows the criminal trial judge told Plaintiff:

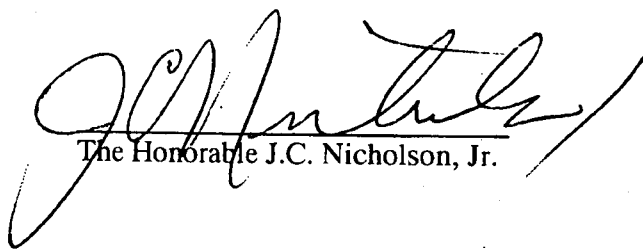
“[Plaintiff's public defender] said back when she used to represent you, her office tried to obtain [the 911 tape], and they were informed it didn't exist. So, again, it's one of those deals where if you had it, I would let you play it probably, but if it doesn't exist, I can't create it.”

Tr. of Hr'g at 636:1-6.

Plaintiff filed his Complaint on February 18, 2015, more than six years after he became aware that potentially exculpatory evidence was destroyed prior to his criminal trial. Therefore, Plaintiff's claim is time barred by S.C. Code Ann. § 15-78-110 as having been commenced more than two years after the cause of action accrued.

THEREFORE, the Court grants Defendants' Motion to Dismiss and dismisses Plaintiff's Complaint with prejudice. This Order ends the case.

AND IT IS SO ORDERED.



The Honorable J.C. Nicholson, Jr.

5/13, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON
PLEAS FOR THE 9TH CIRCUIT
CIVIL ACTION NO.:

2014-CP-10-770e

Terrell McCoy, 256070

Plaintiff,

v.

North Charleston Police Dept;
sergeant Thomas Deckard

Defendants

-Complaint-

State Prisoner
Jury trial demand

Exhibit 5

FILED
2015 FEB 18 AM 10:43
JULIE J. ARMSTRONG
CLERK OF COURT

- PARTIES -

1. North Charleston Police Department (NCPD), is an party listed as an "Agency" to be sued pursuant to : SC code : Ann § 15-78-70 (c) (Supp. 2001); of its governmental entity "employee" / "gross negligence," while acting in the scope of their official duty . . .

2. The (NCPD) lead detective, Thomas Deckard, in Criminal Case No. 06-GS 10-4987, is an party which exercise destruction of evidence in bad faith, placing his conduct to constitute negligent and gross negligence in an reckless ness, wilfulness, or wantonness conduct, pursuant to : "South Carolina Tort Claims Act § 15-78-60 (a)(5) & (25) . . ."

3. Terrell McCoy 256070, is the Plaintiff listed at all times with in his Complaint, as was the sole custody of NCPD during the time of Defendants negligence.

4. Pursuant to : South Carolina Rules of Civil Procedure Rule 82, Plain-

Plaintiff asserts Jurisdiction and venue are properly set. S.C. Code Ann. § 15-78-10 - et. Seq.

-CLAIM-

5. The essential elements in a negligence action are: (1) a duty of care owed by the defendant to the Plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately caused by a breach of duty.

(i) Negligent/Gross Negligence is the intentional conscious failure to do something one ought not to do. It is the failure to exercise slight care. Where a person is so indifferent to the consequences of his conduct as not to give slight care to what he is doing, he is guilty of Negligent/Gross Negligence. Gross Negligence is a mixed question of law and fact and should be presented to the jury unless the evidence supports only one reasonable inference.

A) Defendants and its agent and employee Sergeant Thomas Deckard, owed Plaintiff a care of duty by turning over all evidence to the Solicitor office, whether inculpatory or exculpatory, pursuant to: SCRCRIMP. P(5)

B. Plaintiff placed trust, confidence and reliance upon the judgment and care in Defendants.

C. Defendant Sergeant Thomas Deckard, breached his duties by allowing the all tape recording to be destroyed, as an wilfulness, recklessness, or wantonness act, constituting Negligent/Gross Negligence.

D. As a direct and proximate cause and result of Defendant breach of duties, Plaintiff has been injured and damaged, including but not limited to physical pain and suffering, mental pain and anguish, anger and dissatisfaction, worry, shock, humiliation, wounded feelings, shame, loss of reputation, pecuniary loss, doctors and hospital bills, loss of enjoyment of life, loss of employment opportunities, loss of earnings, loss of earning capacity, and damage to his previous good health, which are all permanent in nature.

- FACTS -

6. On: March 25, 2006, a man name Antwan Bryant was found murdered at 5061 delta street. (NCPD) was called to the scene, and Detective Thomas Deckard was the lead Detective investigating the homicide.

On March 25, 2006, Carinda Williams gave 3 inconsistent statements to agents employed at NCPD. The first statement given on March 25, 2006, at 6:00 a.m, Ms. Williams stated she did not know who murdered Mr. Bryant in her home. At 12:30 noon, March 25, 2006, Ms. Williams, stated that she was not completely honest in her first statement, and gave a second statement, asserting as true, that she saw someone in a black hoodie running away from the area, when she looked out her house. The guy she allege she saw was her boyfriend, Travis Johnson, brother, name is Skezie Boy.

A arrest warrant was issued by a Magistrate Judge on "March 25, 2006" to arrest Plaintiff, with Detective Deckard acting as the affiant: A search was conducted at Plaintiff girlfriend home at 1627 greenbay drive, in which was the Plaintiff's girlfriend, Tonia Theus, at the time, informed Defendant that Plaintiff was out of town, and not in North Charleston, South Carolina, and had been gone since March 24, 2006.

On March 26, 2006, Ms. Williams then gave a 3rd statement and named Travis Johnson brother, who is not the Plaintiff, as the shooter.

On March 27, 2006, Plaintiff returned to North Charleston, from vacation, and went to NCPD to be question by Sergeant Thomas Deckard and was arrested. The arrest warrant was delivered to the Plaintiff, by Thomas Deckard, who also was the affiant.

Plaintiff was detained in the Charleston County Detention Center, and was appointed Public Defender, Lorelle Proctor, to represent him due to his indency

Status.

Plaintiff was detained in the Charleston County Detention Center, and was appointed Public Defender, Lorelle Proctor, to represent him due to his indigency status.

On April 10th 2006, Public Defender, Lorelle Proctor filed a motion pursuant to: SC Rules of Criminal Procedure Rule 5 and 6; "Edward Notice", pursuant to: Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.

Several months later, Solicitor Greg Voigt provided an incomplete SCR Crimp. P Rule 5 motion of discovery. Plaintiff received within his Rule 5, incident reports, Witnesses Statements, Coroner reports, autopsy reports, SLED reports on ballistics, The city of North Charleston CAD operation report (dispatcher) 6 pages. The 911 tape recording was printed on sheets of paper on April 5, 2006, at 11:16 am.

On page 3 of 6, ~~on~~ the dispatcher's report, a witness, who's name has never been disclosed to Plaintiff, dialed 911 and reported at: 5:49 am on March 25, 2006; That "she heard someone banging on the door and the door flew open and BM was C2D, she does not know who he is."

Ms. Proctor, made several request to the Solicitor's office for the 911 tape recording because the evidence was exculpatory and could help exonerate Plaintiff and rebut state witness Carinda Williams's third statement, in which she testified at Plaintiff's second trial that everything in her third statement was true and accurate.

The disclosure of the 911 tape recording would have been useful to Plaintiff defense, as it rebut an untruthful witness, Carinda Williams testimony as Ms. Williams house was known for drugs and violence.

Solicitor Greg Voigt made promises the 911 tape recording would be delivered to Plaintiff's attorney. Greg Voigt later removed himself from the complex case, and Solicitor Burns Wetmore took the case. On July 14, 2008.

Plaintiff case was called for trial.

The 911 tape recording still was not disclosed by the time of Plaintiff first trial. The jury could not decide Applicant's guilt or innocence, so Judge Deidra Jefferson declared a hung jury.

On January 17, 2009, Plaintiff asserted his right to proceed pro se, with Lorelle Proctor, acting by Standby Counsel, in case Plaintiff reinstated he wanted Counsel to represent him.

On February 2, 2009, During Applicant's second trial, The Honorable Roger Young ordered Solicitor Burns Wetmore to turn over all evidence. Mr. Wetmore stated all evidence had been disclosed to the Plaintiff.

During a motion hearing, held outside the presence of the jury, Plaintiff argued to the judge that he subpoena the March 25, 2006 911 tape recording and needed the evidence to support his defense of actual innocence. Ms. Proctor explained to the judge that she had tried three years ago to get the 911 tape recording from previous Solicitor Greg Voigt, but the evidence was never disclosed.

Mr. Wetmore told the judge he never heard the 911 tape and that the tape recording is kept for a certain period then there destroyed and 3 years had pass. On February 6, 2009, Plaintiff was convicted by a jury and sentence to 40 years in prison. He loss his liberty.

During September of 2013th, Plaintiff began receiving information from the city of North Charleston, through the freedom of Information Act, concerning the 911 tape, and dispatcher Jenie Fowler.

On June 20, 2014, Plaintiff received Interrogatories, during a law suit he filed against the city of North Charleston and NCPD for failing to provide public documents he requested through the FOIA.

The interrogatories provided information that reveal the actual date the 911 tape recording was destroyed. The 911 tape was destroyed on June 25, 2006, 2 months and 15 days after, Plaintiff requested the 911 tape recording through the Solicitor office.

The tape recording was exculpatory evidence which could have exonerated Plaintiff, and the defendants knew the evidence was exculpatory that's why they fail to disclose the evidence.

Til this date, Plaintiff has been incarcerated 8 years and 9 months, and has lost wages for 8 years and 9 months.

Plaintiff suffered psychological and physical damages. Plaintiff had dreams of being harmed, has been assaulted by Correctional officers with chemical munition. Plaintiff has been on mental health since his conviction and suffers from depression, anxiety, bipolar & hallucination. Plaintiff has suffered mental anguish from not being able to support his children, separation from children, and family.

- TORT LIABILITY -

7. The South Carolina tort claims act waives government immunity for certain act by government employees. § 15-78-10 et. seq. The exception to this waiver of immunity are contained in S.C. Code ann. Section: 15-78-60, which provides in relevant part as follows:

(a), The government entity is not liable for a loss resulting from:

(5) The exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;

(25), responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any governmental entity", except when the responsibility or duty is exercised in a grossly negligent manner," (emphasis added)

The South Carolina Supreme Court held that these two Sect.

ions must be read in conjunction with one another. Therefore, one must look at the definition of gross negligence in order to interpret this section fully. The term [g]ross negligence is defined as the intentional, conscious failure to do something which is incumbent upon one to do so or the doing of a thing intentionally that one ought not to do... ("Under the tort claim act, if a governmental entity or employees discretion is exercised in grossly negligent manner, then the governmental entity involved is liable for its tort as if it were a private individual.")

Employee Sergeant Thomas Deckard, is a properly party of NCPD, as an Defendant. Employee Thomas Deckard, and (NCPD Records) immunity under section 15-78-70 (a), was waived when the 911 tape recording was destroyed in a grossly negligent manner two months and 15 days after Plaintiff requested it pursuant to: SCRCrimp P Rule 5 & 6, which constituted actual malice, actual fraud, intent to harm, or a crime involving moral turpitude as his conduct was not within the scope of his official duties. Section 15-78-70(b)...

8. The above acts of negligent/gross negligence causing Plaintiff loss pursuant to section 15-78-30(f), resulting from the breach of the proper standard of care (by and through (NCPD) and its employee) have caused the plaintiff to suffer loss of liberty, severe emotional distress, humiliation, anxiety, panic, and fear for safety, loss of reputation, pecuniary loss of reputation, pecuniary loss, loss of enjoyment of life, loss of employment opportunities, loss of earning capacity and damage to his previous good health, which are all permanent in nature.

FOR A FIRST CAUSE OF ACTION

9. The Plaintiff reiterates each and every relevant allegation stated above as if repeated verbatim herein.

10. The Defendants are liable to the Plaintiff as a result of its negligence / gross negligence, recklessness, willfulness, and wantonness in one or more of the following particulars:

- AS TO THE DEFENDANT (NCPD) - Negligence / Gross Negligence

- (a) In failing to perform periodic and proper investigation and take remedial action as might be necessary to prevent destruction of evidence in a grossly negligent manner while on investigation is pending.
- (b) In employing and continuing to employ, Detective Thomas Deckard, when it knew or should have known of his propensity to / and inappropriate behavior
- (c) In failing to train, monitor, and/or supervise its (NCPD) agents including Thomas Deckard
- (d) In hiring, employing and continuing to employ officers as Thomas Deckard / supervisor, when they knew or should have known that he failed to disclose exculpatory evidence to the Solicitor's office during a pending criminal matter.
- (e) In consciously failing to follow (NCPD) policies, procedures, and guide regarding disclosure of evidence to the Solicitor's office for prosecution.
- (f) In failing to provide necessary protection on the Plaintiff while in care and custody of (NCPD)
- (g) In failing to implement adequate security or safety measures designed to prevent or substantially reduce the likelihood that the Plaintiff or other similarly situated would be subjected to the act of loss and

injury as more particularly set forth while being in custody of (NCPD).

AS TO THE DEFENDANTS, Thomas Deckard &
(NCPD) Records - Negligent / Gross Negligence

- (a) In failing to submit all tape recording to the Solicitor's office during pending criminal matter after requested.
- (b) In failing to ensure all evidence was submitted to the Solicitor's office or Plaintiff attorney for prosecution during Plaintiff criminal proceeding.
- (c) As a direct and proximate result of the defendant's Negligence / gross negligence, willfulness, Recklessness, and wanton acts, the Plaintiff has been damaged and is entitled to an award of actual consequential, and monetary damages as to this cause of action in the amount of one million dollars. \$1,000,000.

Damages And Relief Requested

- (1) Any and all references heretofore in various causes of actions as to damages are incorporated herein as if repeated verbatim.
- (2) Pursuant to: SC Code Ann. Tort Claim Act § 15-78-30-(F) "Loss" as a direct and proximate result of the acts and omissions of the Defendant as more particularly set forth above, the Plaintiff has been made to undergo physical pain and suffering, loss of liberty, mental pain and anguish, anger, and disappointment, panic, anxiety, worry, shock, humiliation, wounded feelings, shame, loss of reputation, pecuniary loss, doctor and hospital bills, drug expenses, loss of enjoyment of life, loss of employment opportunities, loss of earnings, loss of earning capacity, and damage to his previous good health, which are all permanent in nature.

Wherefore, the Plaintiff prays an judgment against the Defendants jointly and severally, for an award of \$1,000,000, for actual, consequential, and monetary damages, the cost of this action and

and for such other further relief as this court deems just and proper,
as Plaintiff pursuant to: SCRPC Rule 38(a)(b), preserve his Const-
itutional right for an jury trial. U.S.C.A. Const. Amend 7. "Jury trial demand,"
and "\$150,000", one hundred & Fifty Thousand, punitive damage.
Respectfully Submitted

Date 12-8-14

x Senell McGehee
LCI ASU 39
990 Wisacky Hwy
Bishopville, SC 29010

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
2014-CP-10-7706

TERRELL MCCOY #256070,

Plaintiff,

-vs-

NORTH CHARLESTON POLICE
DEPARTMENT and SERGEANT
THOMAS DECKARD,

Defendants.

TRANSCRIPT OF RECORD

May 7, 2015

Charleston, South Carolina

B E F O R E:

The Honorable J.C. Nicholson, Judge.

A P P E A R A N C E S:

Terrell McCoy, Pro Se

Robin Jackson, Esquire

Kevin DeAntonio, Esquire

Attorneys for the Defendants

Amanda K. Haffender, FIF, RF
Circuit Court Reporter

May 7, 2015.

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

Mr. McCoy, how are you doing today?

THE PLAINTIFF: Good. How are you doing?

THE COURT: Nice to see you.

THE PLAINTIFF: Thank you, and you too.

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

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

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

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

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

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

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

THE PLAINTIFF: Sir, it's not what they

1 failed to produce, it's what was destroyed in my mind.
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
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 2013 --

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 claim
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
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 and my trial in February of 2009. The defendant,
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
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 remittitur 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 said you
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 affect
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
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 tape 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 said.

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, because
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

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 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 if
20 he asked the solicitor, do y'all -- being that she's
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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

THE PLAINTIFF: Yes, sir.

THE COURT: You got it in the transcript?

THE PLAINTIFF: Yes, sir.

THE COURT: You got the page and line?

THE PLAINTIFF: Yes, sir.

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

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

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

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

THE COURT: I understand.

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

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

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

Now, what was the date of the trial?

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
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 DCR, okay? This lawsuit is different from a DCR.
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 I'll die.

14 THE COURT: You've done a good job.
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 of law
23 running as far as this lawsuit is concerned.

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

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 - - -

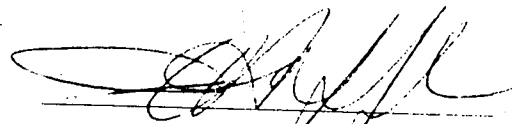
19 (Whereupon, the proceedings were concluded.)

20 - - -

I, the undersigned Amanda K. Haffenden, RPR, CRE, 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

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	3
MOTION TO ALTER OR AMEND JUDGMENT	
Remarks by Mr. McCoy	3
Remarks by Mr. DeAntonio	16
Reply by Mr. McCoy	20
CERTIFICATE OF THE COURT REPORTER	27

INDEX TO EXHIBITS

No exhibits were introduced

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

THE COURT: Okay. This is a motion to alter or amend a judgment? Is that what this is?

MR. MCCOY: Yes, ma'am.

THE COURT: Whose judgment is it?

MR. MCCOY: Judge Nicholson, ma'am.

MS. JACKSON: Your Honor, Judge Nicholson asked to have another judge hear it because his current law clerk is Brook Burroughs, which is Sandy Senn's daughter and so he asked to not be required to hear the motion.

THE COURT: I got you. Okay. That's the disability of a judge under the rules. And I think under that circumstance then I can hear it. All right, yes sir, I'm listening to you.

MR. MCCOY: Yes. How you doing today ma'am?

THE COURT: I'm doing fine.

MR. MCCOY: I filed a Rule 59(e) because ---

THE COURT: --- I'm going to ask you to stand because it's easier to hear and I need my court reporter to be able to.

MR. MCCOY: Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure I move this court with a motion to alter or amend the judgment and make a finding of fact in conclusion with the law pursuant to Rule 52(a) and correct any mistake pursuant to Rule 60(b)

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Remarks by Mr. McCoy
December 2, 2015

1 in the record.

2 THE COURT: Right.

3 MR. MCCOY: On May 7, 2015 the Honorable Judge
4 Nicholson made a ruling dismissing the plaintiff's case
5 on the ground that the plaintiff's complaint was barred
6 by the statute of limitations pursuant to the South
7 Carolina Tort Claim act 15-78-110.

8 THE COURT: Okay.

9 MR. MCCOY: First plaintiff complaint and summons
10 were timely filed pursuant to the Tort Act 15-78-10
11 through 110 and Bayle that is spelled B-A-Y-L-E v South
12 Carolina Department of Transportation South Carolina
13 Court of Appeals 2001 344 S.C. 115. Under the discovery
14 rule which allowed that the statute of limitation begins
15 to run when a cause of action reasonably ought to have
16 been discovered and absolute certainty that a cause of
17 action exists is not required before the statute of
18 limitation begins to run.

19 In this case plaintiff was not made aware of the
20 destruction of evidence, the 911 tape which could have
21 exonerated him at a t June 20, 2014 when he
22 filed this civil action against ants for
23 failing to respond to plaintiff's Freedom of Information
24 Act request, see Terrell McCoy v City of North
25 Charleston, case number 2013-CP-10-06876 as exhibit 1.

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Remarks by Mr. McCoy
December 2, 2015

1 THE COURT: Okay.

2 MR. MCCOY: During that case Judge, Your Honor
3 plaintiff moved for interrogatories during the discovery
4 process and later learned that a 911 tape recording did
5 exist but was later destroyed in order to hamper the
6 defense, see exhibit 2 question 3-12 -- question 3,
7 answer 12.

8 During the May 7, 2015 hearing the defendant argued
9 that the plaintiff knew of the destruction of the 911
10 tape recording at his retrial in 2009. The defendant
11 offered no evidence but alleged plaintiff was aware of
12 the destruction of evidence at his criminal trial, see
13 May 7, 2015 hearing transcript -- I did order that
14 transcript and I'm still waiting for the court reporter
15 to send me the transcript for the May 7, 2015 hearing we
16 had in front of Judge Nicholson so that you can review
17 that record and see why he dismissed my claim. But I'm
18 actually getting to that and you will see what happened.

19 Judge Nicholson made a ruling in favor of the
20 defendants and dismissed the civil action. Judge
21 Nicholson read plaintiff's retrial transcript page 635
22 through page 636 during the hearing and made a ruling
23 stating that plaintiff knew of the destruction of the
24 evidence. This is not true, see exhibit 3 the trial
25 transcript page 635 line 25 through page 636 lines 1

1 through 7. During the plaintiff's retrial Judge Young
2 stated the 911 tape recording did not exist and that his
3 attorney was informed also by the Solicitor's office it
4 did not exist. If plaintiff was made aware of the
5 spoliation during the retrial he could have requested a
6 jury charge on spoliation of evidence. The judge could
7 have asked the jury to draw inference whether the
8 evidence destroyed prejudiced the plaintiff's case.

9 The plaintiff also subpoenaed the dispatch and Jean
10 Felder [phonetic] testified about the 911 call she
11 received but was told there were two Jean Felder's
12 [phonetic] that worked for North Charleston Police
13 Department so the subpoena went to the wrong person, see
14 trial transcript page 631 line 17 through 25 through page
15 632 -- and I'm sorry I don't have it. I think that's in
16 the record already.

17 THE COURT: Okay.

18 MR. MCCOY: Plaintiff later discovered there was
19 only one Jean Felder [phonetic] who worked at North
20 Charleston Police Department during this lawsuit against
21 North Charleston Police Department and Freedom of
22 Information Act claim. So North Charleston Police had
23 to hamper the defense in order to obtain a conviction,
24 see exhibit 4, which is a letter I have which is exhibit
25 4.

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Remarks by Mr. McCoy
December 2, 2015

1 THE COURT REPORTER: Sir, could I get you to go a
2 little slower please? Speak a little slower please.
3 Thank you.

4 MR. MCCOY: Yes, ma'am. Judge Young asked was
5 there a 911 tape recording and Solicitor Burns Wetmore
6 stated he never heard one. Judge Young then stated he
7 could not create a 911 tape because it did not exist, see
8 trial transcript page 631 through 636. The word exist in
9 the American Heritage College Dictionary third edition
10 means to be present under certain circumstance or in a
11 specified place occur, Latin term E-X-I-S-T-E-R-E, E-X-I-
12 S-I-S-T-E-R-E to come forth, be manifest, or to stand.

13 If the Judge would examine the word spoliation in
14 the Black's Law Dictionary he would see that the two
15 words have different meaning. Also see destruction,
16 which means the act of destroying or demolishing, the
17 ruining of something.

18 My claim was dismissed because he said I knew that
19 the evidence was destroyed at my retrial. The Solicitor
20 and the Judge stated that the evidence did not exist so
21 there was no cause of action right there. I have
22 evidence that a cause of evidence existed which is why I
23 could bring a claim to the court. If there is no
24 evidence that a claim existed I can't come to a court and
25 argue that they destroyed something and they violated my

1 Constitutional rights if I don't have evidence to back up
2 my claim therefore I did not know at my trial they had
3 destroyed this evidence.

4 THE COURT: In other words just to be sure I'm
5 following you, in other words what you're talking about
6 is there is a difference between evidence not existing
7 and evidence being destroyed; yes?

8 MR. MCCOY: Correct.

9 THE COURT: If evidence -- for example not existing
10 means maybe it never existed.

11 MR. MCCOY: It never existed; that's my ---

12 THE COURT: --- and maybe it didn't exist because
13 it was destroyed. But what you're saying is when the
14 Judge is saying it didn't exist that doesn't put you on
15 notice of anything other than it didn't exist ---

16 MR. MCCOY: --- exactly ---

17 THE COURT: --- not the reason for the failure to
18 exist ---

19 MR. MCCOY: --- yes, because it was never told to
20 my lawyer or to me ---

21 THE COURT: --- I'm with you ---

22 MR. MCCOY: --- that the 911 tape was actually
23 destroyed ---

24 THE COURT: --- I got the distinction. In other
25 words your position is that knowing -- to be told that a

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Remarks by Mr. McCoy
December 2, 2015

1 tape doesn't exist does not put you on notice that it was
2 in fact destroyed.

3 MR. MCCOY: Yes. At the Supreme Court, yes ma'am.

4 THE COURT: I got it. I got your argument
5 completely. Now you can continue.

6 MR. MCCOY: Okay. And therefore I was not able to
7 -- after like two or three years later I started ---

8 THE COURT: --- now you're going to have to slow
9 down now so I can follow you.

10 MR. MCCOY: Like two or three years later ---

11 THE COURT: --- two or three years later ---

12 MR. MCCOY: --- I started doing my ---

THE COURT: --- PCR?

13 MR. MCCOY: No, I started doing research -- my
14 appeal was still pending. I filed an appeal ---

15 THE COURT: --- I got you ---

16 MR. MCCOY: --- so while my appeal was pending in
17 the Court of Appeals I was doing my search by due

18 diligence through the court and through like different
19 agencies trying to find if this evidence really existed
20 because I had paperwork, I had a dispatcher's report ---

21 THE COURT: --- slow down a little tiny bit.

22 MR. MCCOY: I'm sorry.

23 THE COURT: You're just getting excited and your
24 brain in moving very fast and your mouth is keeping up
25

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Remarks by Mr. McCoy
December 2, 2015

1 with your brain. Tell your brain to slow down. You've
2 got time; you don't need to rush, okay.

3 MR. MCCOY: Okay. I went through the Freedom of
4 Information Act and I later discovered that there was a
5 911 tape. In fact after I asked them to do the
6 interrogatories and asked them can you please tell me the
7 date and time that the 911 tape was destroyed -- well, I
8 asked her what happened to the 911 tape first and they
9 told me it was destroyed.

10 Then I said can you please tell me the date, the
11 time and year that the 911 tape was destroyed and they
12 told me it was destroyed on June 25th of 2006; two months
13 and 15 days after my public defender Ms. Lori Proctor had
14 filed a Brady motion with the Clerk of Court and with the
15 Solicitor's office. So it was destroyed like two months
16 and 15 days. So the State was already on notice that we
17 wanted the 911 tape but then it was destroyed because the
18 evidence could exonerate me and get me free.

19 THE COURT: I'm following you. Now, let me ask you
20 this question.

21 MR. MCCOY: Yes, ma'am.

22 THE COURT: When you're talking about having served
23 -- you did a couple of things. You made some freedom of
24 information requests.

25 MR. MCCOY: Yes, ma'am.

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Remarks by Mr. McCoy
December 2, 2015

1 THE COURT: But you also served some
2 interrogatories?

3 MR. MCCOY: Yes, ma'am.

4 THE COURT: In what litigation were you asking
5 those interrogatories?

6 MR. MCCOY: In the freedom of information. When I
7 first started the Freedom of Information Act I wasn't too
8 familiar with the law I sent a request for them asking
9 for some requested information pertaining to my case.

10 THE COURT: Under the Freedom of Information Act?

11 MR. MCCOY: Under the Freedom of Information Act
12 but they never responded ---

13 THE COURT: --- which you don't have to have a
14 lawsuit to do; it's just a freedom of information
15 request.

16 MR. MCCOY: They never responded to my request so I
17 sent an appeal. Once I sent my appeal in they never
18 responded to my appeal so after that I filed my lawsuit
19 pursuant to the Act and that's when I started moving for
20 interrogatories, requests for admission, and production
21 of documents. I received the information about the 911
22 tape was destroyed which I never knew it was destroyed.
23 I just thought they never produced it. That's a
24 different claim. I thought they -- that would have been
25 an issue for my PCR; failing to produce something under

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Remarks by Mr. McCoy
December 2, 2015

1 Brady -- but then a tort ---

2 THE COURT: --- now you're going to have to slow
3 down.

4 MR. MCCOY: A tort occurred when they destroyed it
5 and that became negligence.

6 THE COURT: Okay.

7 MR. MCCOY: Therefore, that's when I filed. Once I
8 found out June 20th, 2014 that it was destroyed that's
9 when I filed this lawsuit against North Charleston Police
10 Department for violating my Constitutional rights and
11 destroying this evidence. I feel like I fell within the
12 timeframe because I didn't find out until June 20th, of
13 2014 ---

14 THE COURT: --- I get it ---

15 MR. MCCOY: --- that the tape actually was ---

16 THE COURT: --- I got your argument. In other
17 words the difference is not existing as opposed to being
18 destroyed. And so I gather it went to trial?

19 MR. MCCOY: Yes, ma'am.

20 THE COURT: Okay. So you went to trial?

21 MR. MCCOY: Yes, ma'am.

22 THE COURT: And at the trial you want the 911 tape
23 that's when the Judge makes the comment I can't create
24 something that doesn't exist; it doesn't exist?

25 MR. MCCOY: It never existed.

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Remarks by Mr. McCoy
December 2, 2015

1 THE COURT: I got you. And that's what you
2 understand?

3 MR. MCCOY: Yes, ma'am.

4 THE COURT: Okay. So the trial goes forward and
5 are you convicted?

6 MR. MCCOY: Yes, ma'am.

7 THE COURT: Okay. And then you go to SCDC?

8 MR. MCCOY: Yes, ma'am.

9 THE COURT: Okay. And while you're at SCDC then
10 you file your appeal?

11 MR. MCCOY: Yes, ma'am.

12 THE COURT: While the case is on appeal you begin
13 to ask questions. You ask under the Freedom of
14 Information Act tell me about this tape did it exist or
15 didn't it exist. And you don't receive an appropriate
16 response so you file your suit under the freedom of
17 information act.

18 MR. MCCOY: Yes, ma'am.

19 THE COURT: And then under answer to
20 interrogatories you then receive specific information
21 about the tape. That's when you get that specific
22 information that the tape was destroyed at a particular
23 time?

24 MR. MCCOY: Yes, ma'am.

25 THE COURT: Let me ask you this question. So

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Remarks by Mr. McCoy
December 2, 2015

1 you're on appeal at the Court of Appeals?

2 MR. MCCOY: Yes, ma'am.

3 THE COURT: And all this is going on?

4 MR. MCCOY: Yes, ma'am.

5 THE COURT: So you haven't filed your PCR?

6 MR. MCCOY: No, ma'am.

7 THE COURT: So what happened with the PCR?

8 MR. MCCOY: I go to my PCR on December 14th; in 12
9 days.

10 THE COURT: Okay. Now is all of this included in
11 your PCR?

12 MR. MCCOY: Yes. I have that included as
13 statements conduct for failing to produce evidence under
14 Brady v Maryland.

15 THE COURT: Okay. Do you have counsel in your
16 PCR?

17 MR. MCCOY: Yes, ma'am. I have Mr. Rodney Davis
18 ma'am.

19 THE COURT: Rodney Davis?

20 MR. MCCOY: Yes, ma'am.

21 THE COURT: He knows about all this?

22 MR. MCCOY: Yes, ma'am.

23 THE COURT: Okay. I'm just getting the lay of the
24 land here. And so when Judge Nicholson heard this civil
25 action the tort action Judge Nicholson dismissed it as

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Remarks by Mr. McCoy
December 2, 2015

1 being untimely filed as a cause of action for the tort?

2 MR. MCCOY: Yes, ma'am. He read off what was read
3 in the transcript on page 636 when he said that it said
4 it didn't exist. Ms. Proctor stated that when she went
5 to the Solicitor's office they stated it didn't exists so
6 therefore we were not aware that ---

7 THE COURT: --- that's what you were on notice to do
8 more examination, more ---

9 MR. MCCOY: --- investigation ---

10 THE COURT: --- investigation to see what that
11 meant; did it not exist or was it destroyed?

12 MR. MCCOY: Right.

13 THE COURT: Got you, I'm with you. I got it.

14 MR. MCCOY: They never came out and said ---

15 THE COURT: --- I got you ---

16 MR. MCCOY: --- occurred and destroyed evidence.
17 We didn't know that.

18 THE COURT: I'm with you. I think I got what I
19 need from it.

20 MR. MCCOY: Okay.

21

22

23

24

25

1 THE COURT: I got it. Your position is that Judge
2 Nicholson was correct because that colloquy by the court
3 and the knowledge that Ms. Proctor would have had from
4 the Solicitor's office that it didn't exist would have
5 been information that would have put her on notice to do
6 further investigation to see what that means. It doesn't
7 exist what does that mean? Does it mean it was
8 destroyed? Does it mean it never existed that there was
9 a malfunction of the 911 system, etcetera?

10 MR. DEANTONIO: That's essentially correct. I mean
11 in the transcript of that hearing ---

12 THE COURT: --- of what hearing?

13 MR. DEANTONIO: The criminal retrial February of
14 2009. Lorelle Proctor at one point says they had asked
15 for the tape and they said that the tape was coming. She
16 says there were problems with delay and by the time I
17 think they realized they didn't have it I think it's been
18 destroyed because we never could find one.

19 THE COURT: And what is that date?

20 MR. DEANTONIO: That was February of 2009 at the
21 retrial. So that was a hearing outside the jury's
22 presence when they started talking about why this 911
23 call hadn't been produced. So it's our position that at
24 that time in 2009 they were aware that the tape existed,
25 it hadn't been produced, it should have been produced,

1 and basically everyone seemed to think it had been
2 destroyed pursuant to some kind of retention policy in
3 the normal course of -- the tape had been taped over I
4 guess after 90 days.

5 THE COURT: Okay. So let me ask you this
6 question. The retrial when your case was at the Court of
7 Appeals while you're asking the questions under the
8 freedom of information is that an appeal from the first
9 trial or the second trial?

10 MR. MCCOY: The second trial.

11 THE COURT: Okay. I just want to make sure I got
12 all the information. I'm going to let you argue fully
13 but let me let him. Yes, sir?

14 MR. DEANTONIO: Also, they had in their possession
15 the CAD report and so there was a brief description of
16 this 911 phone call and so they knew that the call had
17 existed, it had been -- there were notes about what was
18 said in that call. So he was going to call the
19 dispatcher to testify as to what the dispatcher heard on
20 that call. So he knew that the recording existed at that
21 time. It just wasn't produced. The argument is that in
22 February of 2009 they knew that they were not receiving a
23 911 recording that existed.

24 THE COURT: I got you.

25 MR. DEANTONIO: So there is no question that they

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Remarks by Mr. DeAntonio
December 2, 2015

1 didn't know whether a call ever existed or not because
2 they had the CAD report that said the call existed.

3 THE COURT: I'm with you. I got it.

4 [Whereupon, the court reviews documents]

5 MR. DEANTONIO: If I could add one more thing?

6 THE COURT: Sure.

7 MR. DEANTONIO: In the complaint looking outside
8 this retrial transcript the complaint states Mr. Wetmore
9 told the Judge he never heard the 911 tape and that the
10 tape recording was kept for a certain period and then
11 they are destroyed. So that's again at the retrial we
12 learned that it had been destroyed because three years
13 had passed since I guess the 911 call was originally
14 taken and this retrial.

15 THE COURT: Let me ask you this question. During
16 this conversation which the destruction is actually
17 talked about tell me what is the date of that retrial?

18 MR. DEANTONIO: That was February, 2009; February
19 6th or 5th possibly.

20 THE COURT: And this action was filed when?

21 MR. DEANTONIO: This was February 18th, 2015 so
22 over six years ---

23 THE COURT: 2014.

24 MR. MCCOY: It was filed in 2014.

25 THE COURT: Okay. Yes, December 18th --

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Remarks by Mr. DeAntonio
December 2, 2015

1 MR. DEANTONIO: Your Honor, it is 2015.

2 MR. MCCOY: It was served on the defendants in 2015
3 but was actually filed with the Clerk of Court in 2014.

4 MR. DEANTONIO: The file stamp on the complaint
5 says 2015.

6 THE COURT: Okay.

7 MR. DEANTONIO: The FOIA litigation was I believe
8 2014.

9 THE COURT: Okay.

10 MR. MCCOY: Can I say something?

11 THE COURT: As soon as I process -- let me process
12 the date. It's like math with me; I have to process it
13 and hold on to it.

14 [Whereupon, the court reviews documents]

15 THE COURT: Yes, sir. Anything else?

16 MR. DEANTONIO: What's that?

17 THE COURT: Anything else from you?

18 MR. DEANTONIO: I mean just the Solicitor and the
19 Public Defender said at that hearing that they believed
20 it had been destroyed because the retention period had
21 passed.

22 THE COURT: I got it. Okay.

23 MR. DEANTONIO: And he knew it had existed at some
24 point because they had the CAD report.

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Reply by Mr. McCoy
December 2, 2015

1 THE COURT: Okay. I got it. And I'm listening to
2 you.

3 MR. MCCOY: Yes ---

4 THE COURT: --- and I want to be really clear with
5 you about something because I think it's really, really
6 important. I just had to do this in my head; this is not
7 the PCR. This is a whole different issue.

8 MR. MCCOY: This is the negligence -- this is for
9 the negligence, this is for negligence.

10 THE COURT: That's right.

11 MR. MCCOY: For destroying evidence ---

12 THE COURT: --- that's right.

13 MR. MCCOY: He stated that the Solicitor and Ms.
14 Proctor knew at my trial that it was destroyed. Mr.
15 Burns Wetmore stated that he never heard of a tape. He
16 never checked for a tape. They don't know if it had been
17 destroyed or whatever. He said it was his theory that it
18 was destroyed because three years had already passed.

19 Second, in any criminal case if there is evidence,
20 whether it is exculpatory or inculpatory, that evidence
21 must be held and sent to the Solicitor's office. That
22 evidence must not be destroyed. And this is in
23 accordance with the police policies and procedures that
24 evidence must be held until litigation is over and must
25 be -- the Judge has to be the one to order that that

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Reply by Mr. McCoy
December 2, 2015

1 evidence is destroyed.

2 THE COURT: I know what you're talking about. In
3 that whole line that argument is your PCR argument.

4 MR. MCCOY: Yes.

5 THE COURT: It really is. Don't forget that. That
6 is your PCR argument. Are you with me?

7 MR. MCCOY: Yes, ma'am.

8 THE COURT: Because here's the difference; here's
9 the difference. The difference is under the discovery
10 rule what the discovery rule says is that you have three
11 years if you serve the notice and the tort claim out
12 within the year and then its two years. Y'all help me;
13 two years once you send the notice and ---

14 MR. MCCOY: --- when it's reasonable the evidence
15 should have been discovered.

16 THE COURT: And what the discovery rules says is
17 that it's the information that would put a person on
18 reasonable -- Mr. reasonable person on notice that there
19 needs to be more investigation done to figure out whether
20 or not ---

21 MR. MCCOY: --- a cause of action exists ---

22 THE COURT: --- exactly ---

23 MR. MCCOY: --- and that's what I did ---

24 THE COURT: --- exactly, exactly. The question
25 really then gets to be what happened at your second trial

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Reply by Mr. McCoy
December 2, 2015

1 where there really are -- and I would say too at your
2 first trial whether or not that would put that discussion
3 -- hold on now ---

4 MR. MCCOY: --- it wasn't never brought up in my
5 first trial.

6 THE COURT: It wasn't brought up in the first
7 trial?

8 MR. MCCOY: No, ma'am. It was never brought up in
9 my first trial ---

10 THE COURT: --- okay ---

11 MR. MCCOY: --- it was brought up in my second
12 trial.

13 THE COURT: Just the second trial? In other words
14 this part that I've been reading where the Judge says
15 that it didn't exist that's in the second trial ---

16 MR. MCCOY: --- that's in the second trial.

17 THE COURT: Okay. And so the question is did that
18 put the reasonable person on notice that you should do
19 more investigation. That's what Judge Nicholson was
20 dealing with in terms of the statute of limitations. You
21 know -- so that's -- but you understand fully that that
22 is completely different than what you've got going on in
23 your PCR now don't you?

24 MR. MCCOY: Yes, ma'am. I know that ---

25 THE COURT: --- and I want you to fight for your

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Reply by Mr. McCoy
December 2, 2015

1 civil case; I want you to do that too. But you got a PCR
2 coming up and I just want to be real straight with you
3 that you keep those separate; you've got to keep those
4 separate.

5 MR. MCCOY: Yes, ma'am.

6 THE COURT: Because the civil temporal stuff, the
7 statute of limitations is a real different issue than
8 what arises in the PCR because through your freedom of
9 information request action you learned that very specific
10 time which is I think, and this is my commentary, a lot
11 more important to the PCR than the civil action because
12 it's important. It's more important I think to the PCR
13 action because this language, this conversation that is
14 going on during your second trial the question is does
15 that put a reasonable person on notice -- and what's the
16 date of that again; that's in '09?

17 MR. MCCOY: It's February 5th or 6th of 2009.

18 THE COURT: Of 2009?

19 MR. MCCOY: Yes.

20 THE COURT: So the question is I think probably it
21 probably did start taking on your civil case at that
22 point rather than allowing you the period of time to do
23 the freedom of information investigation. I'll think
24 about that and I'll do some research. I don't want you
25 to think I'm -- I'm not making a decision today.

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Reply by Mr. McCoy
December 2, 2015

1 MR. MCCOY: Okay.

2 THE COURT: But what I want to be so straight with
3 you about is that's a whole different issue than on your
4 PCR.

5 MR. MCCOY: I know that.

6 THE COURT: For that PCR that's a big deal I think.
7 I don't know what -- I can't possibly know that but I
8 think the fact that you went forward for Constitutional
9 purposes and learned that at the time that the Brady
10 motion was sent it still existed. That's important for
11 your PCR. Don't forget that. Don't let your lawyer
12 forget that.

13 MR. MCCOY: Thank you. Yes, ma'am.

14 THE COURT: But I'm going to do some looking to see
15 if -- what does that mean? How much more -- would you be
16 afforded the time if you are then that reasonable person?
17 And that reasonable person then undertakes to find out
18 that information, that additional information and in
19 order to do that you had to send a FOIA request and then
20 in order to -- and additionally you have to do additional
21 things like file suit under the FOIA does that in fact
22 extend the time for the discovery? Do you see what I'm
23 saying?

24 MR. MCCOY: Yes, ma'am.

25 THE COURT: Or at that point must you then file

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Reply by Mr. McCoy
December 2, 2015

1 suit and then find out more during discovery. I don't
2 know the answer to that. I'll do some looking and I'll
3 do some research on that issue. But I just -- this is
4 your civil case. I just want to be real clear what you
5 do and don't get confused about the FOIA in your work
6 vis-à-vis the PCR. Do you see what I'm saying?

7 MR. MCCOY: Yes, ma'am.

8 THE COURT: Okay. I think I've got the issues.
9 Is there anything else you want to tell me?

10 MR. DEANTONIO: One additional thing. I did want
11 to mention that the initial FOIA request that was sent
12 out wasn't sent out for I mean I guess four years after
13 that retrial. So when you're talking about a reasonable
14 time to investigate whether a cause of action exists that
15 FOIA ---

16 THE COURT: --- I'm going to take a look at it to
17 be sure but I -- and I don't know that I'll change Judge
18 Nicholson but I'm going to look at it to be absolutely
19 fair to you sir. I'll take a look at that because I
20 don't know that the civil case exists but again don't ---

21 MR. MCCOY: --- I just want to ask that you take
22 into consideration that when they told me that it does
23 not exist I'm going by the terminology of exists. When
24 they tell me it doesn't exist ---

25 THE COURT: --- I got it ---

Terrell McCoy v North Charleston Police Department
Motion to Alter or Amend Judgment-Reply by Mr. McCoy
December 2, 2015

1 MR. MCCOY: --- it never existed. There is no 911

2 ---

3 THE COURT: --- I got all that ---

4 MR. MCCOY: --- and my lawyer said when she
5 requested it and she requested it when I first got
6 incarcerated. So when they told her when I first got
7 incarcerated that it didn't exist that means it's gone.

8 THE COURT: I'm with you. I got it. I get the
9 arguments on both sides. I got it. Thank you. Let me
10 say this is an order I'm not going to ask anybody to
11 draft an order because obviously this is one that would
12 be -- either way it's going to be very short and I'll do
13 it myself.

14 MR. MCCOY: Yes, ma'am.

15 THE COURT: Okay. Thank you.

16 MR. MCCOY: Thank you so much, Judge.

17 THE COURT: Hold on. Let me be sure for the
18 Clerk's office. You haven't changed your residence?
19 You're still -- you know how they shift you guys ---

20 MR. MCCOY: --- yes, ma'am. I'm still at Broad
21 River Road.

22 THE COURT: You're still at Broad River. Okay,
23 thank you, sir. Thank you.

24 MR. MCCOY: Thank you so much Judge.

25 *****END OF TRANSCRIPT OF RECORD*****

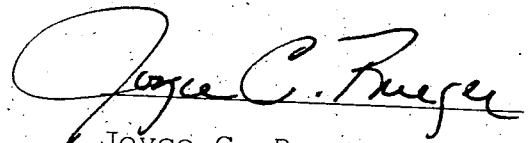
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit 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 the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 2nd day of December, 2015.

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

May 10, 2016



Joyce C. Rueger, CVR-M

Court Reporter

Civil case
Exhibit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	CASE NO. 2013-CP-10-06876
Terrell McCoy,)	
Plaintiff,)	
vs.	)	CITY OF NORTH CHARLESTON'S
	)	RESPONSE TO PLAINTIFF'S
	)	SECOND INTERROGATORIES
CITY OF NORTH CHARLESTON;)	
NORTH CHARLESTON POLICE)	
DEPARTMENT ¹ ,)	
Defendants.)	

To: Terrell McCoy

NOW COMES, the Defendant, City of North Charleston (hereinafter "the City") and North Charleston Police Department (hereinafter "NCPD"), by and through counsel, answering Plaintiff's Interrogatories and Requests for Production, received February 13, 2014, as follows in accordance with Rules 33 and 34 of the South Carolina Rules of Civil Procedure²:

1. Can you please tell me whether or not the Plaintiff sent a letter the City of North Charleston, SC Legal Department, on September 3, 2013, seeking the procedure the 911 dispatchers procedure??

ANSWER: The plaintiff's letter is dated September 3, 2013.

2. Did the Plaintiff receive the procedure the 911 dispatcher must follow when receiving an emergency call in relation with a homicide in 2006 and North Charleston Police Department dispatcher's procedure. If not, Explain why.

¹ The City of North Charleston ("the City") is the real party in interest as the NCPD is a mere department of that entity.

² The City has made a good faith effort to fully answer these discovery requests based upon currently available information. The City expressly reserves the right to amend and supplement these responses.

ANSWER:

3. Was the 911 tape recording, (CAD OPERATION REPORT #2006036162) for March 25, 2006 destroyed?

ANSWER: Yes

4. The letter the Plaintiff received from Tonia Mallette from Charleston Consolidated 911 Center does not explain the procedures the 911 dispatcher must follow when receiving call in relation with a homicide in 2006. But you stated in the Plaintiff first Interrogatory #4 and 5 it does. Can you please explain?

ANSWER: When the center receives a call, the call is processed by the call taker. It is then sent to the appropriate (police, fire, EMS) for dispatching the appropriate resource.

5. Can you please send me a copy of the approve FOIA request the defendants sent to NCPD, requesting the retention period for the 911 tape recording for 2006?

ANSWER: See attached.

6. NCPD, did you ever receive a copy of the approve FOIA Request that Beth Woodall forwarded to your office on August 26, 2013?

ANSWER: Yes.

7. Can the defendants explain why the March 25, 2006 911 tape recording, (CAD OPERATION REPORT # 2006036162) was destroyed before the retention period?

ANSWER: The 911 tape was erased and reused in accordance with the 90 retention period. The CAD Report was purged in accordance with the three year retention period.

8. Can the defendants explain whether or not "dispatchers" receive the 911 caller's name when a 911 call is received?

ANSWER: Yes.

9. When a dispatcher receive a 911 call from a caller reporting a crime, is that caller's identity kept confidential? If yes, explain why?

ANSWER: Yes. All emergency telephone calls remain confidential and used only for the purposes as may be needed for police, fire, EMS, or other emergency services. The recordings should not be released to any other parties without court order or subpoena.

Would this caller identify be made available to the Solicitor's office in Charleston County if the case was sent to trial.

ANSWER: Yes.

10. Can you please point out the section, in City's Exhibit #2 [NC Record Retention Schedule] where it states the retention period for 911 tape recordings?

ANSWER: NCPD-33 Voice Tapes page 16

11. Are both defendants represented by Deputy City Attorney, Frances Austin, in this civil action?

ANSWER: Yes, NCPD is a mere department of the entity, City of North Charleston.

12. Can you tell me exactly what date, month, year the 911 tape recording (CAD OPERATION REPORT #2006036162) for March 25, 2006 was destroyed?

ANSWER: Recording June 25, 2006; CAD: March 25, 2009

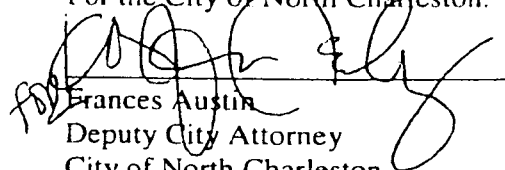
13. According to the North Charleston Police Department Records Retention Schedule cover head sheet, it's dated February 2000. Was the schedule revised in 2006? If yes, please produce the North Charleston Police Department Records Retention Schedule for 2006.

ANSWER: No, it was not.

14. Can you explain why my request, requesting for CAD OPERATION REPORT, dispatch log no. 2006036162, and documents concerning the procedure a 911 dispatcher must follow when taking a call was not sent to NCPD or never answered?

ANSWER: No.

For the City of North Charleston:



Frances Austin
Deputy City Attorney
City of North Charleston
PO Box 190016
North Charleston, SC 29419-9016

North Charleston, South Carolina
June 20, 2014

Exhibit 27

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2013-CP-10-06876
)	
Terrell McCoy,)	
)	
Plaintiff,)	
	)	CITY OF NORTH CHARLESTON'S
vs.	)	RESPONSE TO PLAINTIFF'S
	)	REQUEST FOR ADMISSION
)	
CITY OF NORTH CHARLESTON;)	
NORTH CHARLESTON POLICE)	
DEPARTMENT ¹ ,)	
)	
Defendants.)	
_____)	

To: Terrell McCoy

NOW COMES, the Defendant, City of North Charleston (hereinafter "the City") and North Charleston Police Department (hereinafter "NCPD"), by and through counsel, answering Plaintiff's Request for Admission, received April 6, 2014, as follows in accordance with Rule 36 of the South Carolina Rules of Civil Procedure²:

1. The genuineness of the following documents copies of which you have made available for inspection and copying by Defendants attorney Frances Austin.
 - (a) Charleston County Code Chapter 2, Article V, Section 2-138 as City's Exhibit 2 and APCO CALEA 6.5.4 a-c, 6.7.1 a-b, 6.7.2 as City's Exhibit 3.

ANSWER: The information presented in the above referenced responses was provided truthfully and in good faith.

2. The truth of each following interrogatory. (a) City of North Charleston's Response to Plaintiff's First Interrogatories, 1-18, dated March 24, 2014. (b)

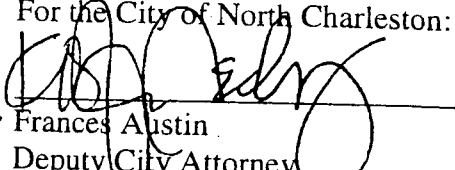
¹ The City of North Charleston ("the City") is the real party in interest as the NCPD is a mere department of that entity.

² The City has made a good faith effort to fully answer these discovery requests based upon currently available information. The City expressly reserves the right to amend and supplement these responses.

City's exhibit 1 and 2 (Tonia Mallette letter and North Charleston Police Department Record Retention Schedule) (c) Plaintiff's Second Interrogatories.

ANSWER: The information presented in the above referenced responses was provided truthfully and in good faith.

For the City of North Charleston:



Frances Austin

Deputy City Attorney

City of North Charleston

PO Box 190016

North Charleston, SC 29419-9016

North Charleston, South Carolina
June 20, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Terrell McCoy,

Plaintiff,

vs.

CITY OF NORTH CHARLESTON;
NORTH CHARLESTON POLICE
DEPARTMENT¹,

Defendants.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO. 2013-CP-10-06876

) CITY OF NORTH CHARLESTON'S
) RESPONSE TO PLAINTIFF'S
) FIRST INTERROGATORIES

Exhibit #8

To: Terrell McCoy

NOW COMES, the Defendant, City of North Charleston (hereinafter "the City") and North Charleston Police Department (hereinafter "NCPD"), by and through counsel, answering Plaintiff's Interrogatories and Requests for Production, received February 13, 2014, as follows in accordance with Rules 33 and 34 of the South Carolina Rules of Civil Procedure²:

1. Is North Charleston Police Department and Charleston County Consolidated 911 Center the same entity?

ANSWER: No.

2. Did Beth Woodall ever send the Plaintiff the retention period for 911 Tape during the year 2006 documents he requested? If no, explain.

¹ The City of North Charleston ("the City") is the real party in interest as the NCPD is a mere department of that entity.

² The City has made a good faith effort to fully answer these discovery requests based upon currently available information. The City expressly reserves the right to amend and supplement these responses

ANSWER: No. Beth Woodall forwarded the approved FOIA Request to The ~~North~~ ^{Never} Charleston Police Department and Consolidated Dispatch on August ^{receive} 26, 2013 for completion.

3. Did the Plaintiff request for the retention period for 911 calls (and radio transmission) for the year 2006 pursuant to FOIA? Yes or no?

ANSWER: Yes.

4. Did the Plaintiff ever send a FOIA request seeing document which show the procedure a 911 dispatcher must follow when taking a 911 call from emergency caller? Yes or No. Did the Defendant answer this request? If no, explain why. Never receive

ANSWER: Yes. North Charleston Legal Department approved FOIA on August 26, 2013, and Karen Cordray from North Charleston Police Department forwarded this request on to Tonia Mallette from Charleston County Consolidated 9-1-1 Center (hereinafter "the Center"). Ms. Mallette mailed a letter to Mr. McCoy on August 28, 2013 showing the requested Consolidated Dispatch Center's retention period. See City's Exhibit 1

5. Is it true that when the Plaintiff sent a third request in September of 2013 requesting for documents in connection with the retention period for 911 calls (and radio transmission) and also a copy of the unedited copy of CAD operation report dispatch log no. 200603612 made at the North Charleston Police Department during the year of 2006 pursuant to FOIA, it was sent to the Charleston County Consolidated 911 Center instead of NCPD? If true, please explain why.

ANSWER: When a person dials 9-1-1 in Charleston County, that call is directed to a Public Safety Answering Point. When the Center receives a 9-1-1 call, the Call Taker receiving the call will process the call. Should the call be for an agency not serviced by the Center, the Call Taker will transfer or forward the call via 9-1-1 to the appropriate agency and ensure the transfer is complete before disconnecting the call. The Call Taker will process the call in accordance to the approved protocols and procedures as set forth by the Center. At the appropriate dispatch point, the Call Taker will send the call to dispatch via the Computer Aided Dispatch (CAD). Once the appropriate dispatcher receives the call via the CAD system, the Dispatcher will dispatch the appropriate resources.

Charleston County Retention Period- Consolidated Dispatch:

1. All phone and radio recordings are kept on file for one (1) calendar year from date of recording before being purged from the system. Requests for those records already purged from the system will be provided a letter stating so by the CDC Analyst (Attachment C).
(APCO CALEA 6.5.4 a)
2. All computer aided dispatch reports and logs are kept on file for three (3) calendar years from the date of the report/log before being purged from the system. (APCO CALEA 6.7.2)
9. In 2006, did North Charleston Police Department have a dispatcher name Jenie Fowler employed with them to receive emergency calls?

ANSWER: YES

10. Does North Charleston Police Department have its own policy and procedure on the retention of 911 calls and radio transmission?

ANSWER: Yes, please see North Charleston Police Department Record Retention Schedule attached as City's Exhibit 2

11. Does the Charleston County 911 Center record an Emergency call after the call is directed to a North Charleston Police Department dispatcher?

ANSWER: According to the Center, yes, all calls and radio traffic are recorded.

12. Isn't it true that the Charleston County Consolidated 911 center are not the owners of emergency telephone conversation, data files, files or computer-aided dispatch reports? Are these reports and recording secured within the center and can only be accessed by authorized personnel? Are the responding public safety agencies are the owners of the information?

Pursuant to Capcocalea 6.5.4b, 6.7.1a

ANSWER: According to the Center, yes, the Center provides call taking and dispatching services for Charleston County and local public safety agencies. As a provider of services, the Center is not the owner of radio audio recordings to include: radio transmissions and emergency telephone conversations, data files, files or computer-aided dispatch reports. However, these reports and recordings are secured within the Center and can only be accessed by authorized personnel. The responding public safety agencies are the owners of the information.

13. Was the North Charleston police department owners of emergency telephone conversation and dispatch report receive by their dispatcher such as Jenie Fowler in 2006?

ANSWER: North Charleston Police Department is an entity of the City of North Charleston which did own the conversation and report.

14. Isn't it true Charleston County Consolidated 911 center will dispatch both the Charleston Sheriff's Office and Charleston County EMS if a 911 call is received at the center for an assault with injuries and the sheriff's office are the primary responder? If yes explain why.

ANSWER: If the caller's location falls within the boundaries (district) of the Charleston County Sheriff's Office response area, they are dispatched to the incident. Charleston County EMS will respond for patient care.

15. Do Charleston County Sheriff's Office and North Charleston have two separate jurisdictions?

ANSWER: Yes, the City of North Charleston's jurisdiction is limited to its jurisdictional boundaries as the Charleston County Sheriff's Office is limited to the Charleston County jurisdictional boundaries.

16. Isn't it true that the Charleston County Consolidated 911 center is governed by the Charleston County Sheriff's Office?

ANSWER: No, the Center functions as a Charleston County Department and is governed by a Consolidated Dispatch Board, as agreed in the Intergovernmental Agreement. The Consolidated Dispatch Board has oversight of operational protocols and procedures.

17. In 2006, did North Charleston Police Department have its own dispatch service?

ANSWER: Yes, but technically the dispatch service was operated by the City of North Charleston of which the North Charleston Police Department is an entity within.

18. Did the Charleston County Solicitor office request for the CAD Operation Report and 911 tape in 2006-2009 for call number 200603612?

ANSWER: The City of North Charleston is not with sufficient knowledge to determine whether or not the Charleston County Solicitors' Office requested the above referenced information.

For the City of North Charleston:



Frances Austin
Deputy City Attorney
City of North Charleston
PO Box 190016
North Charleston, SC 29419-9016

North Charleston, South Carolina
March 24, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 STATE OF SOUTH CAROLINA)
 -v-)
)
 Terrell Lynwood McCoy)
)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 FOR THE NINTH JUDICIAL CIRCUIT
 Warrant No(s): F-969254, K-066242
 Charge: Murder, PWID MARJ

Exhibit 2
 FILED
 2006 APR 19 AM 12:38
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

REQUEST PURSUANT TO SC RULES
 OF CRIMINAL PROCEDURE- RULE 5 & 6
EDWARDS NOTICE

The Defendant respectfully requests that the Solicitor produce or otherwise make available to the Defense all documents, tangible objects, reports of examinations and tests, witness statements, physical evidence and any other information subject to disclosure pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure.

The Defendant further requests the Solicitor to produce all evidence favorable to the Defendant, subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.

This request is a continuing request for all such discoverable information as it becomes known to the Solicitor or any Prosecution Agents.

The Defendant hereby asserts his Fifth Amendment right to remain silent and does not wish to be questioned in the absence of counsel, pursuant to McNeil v. Wisconsin, 111 S.Ct.220(1991), and Edwards v. Arizona, 451 U.S. 477 (1981).

Furthermore, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, Defendant objects to the introduction of a chemist's or analyst's report without such person being personally present at trial. Defendant also requests the appearance in Court of persons within the chain of custody of all physical evidence.

Respectfully Submitted,
Lorelle D Proctor
 Lorelle D Proctor
 Attorney for Defendant

Charleston, South Carolina
 Dated: 3/30/06

CERTIFICATE OF SERVICE

I hereby certify that this Rule 5 Motion was served on the Solicitor for the Ninth Judicial Circuit on 4.10.06

MAH

1 A. No.

2 THE COURT: Finished?

3 MR. WETMORE: Yes, sir.

4 THE COURT: Okay. Redirect?

5 MR. TERRELL McCOY: No, sir.

6 THE COURT: All right. You can step down.

7 Thank you. Do you have another witness?

8 MR. TERRELL McCOY: No, Your Honor. Hold on,

9 Your Honor. All right.

10 THE COURT: All right. I'm going to send
11 y'all out for a couple minutes while we take up some
12 legal matters. Don't begin deliberations or discussions
13 about the case.

14 (In open court, jury not present.)

15 MS. PROCTOR: He has something about a
16 witness he'd like to address with you.

17 THE COURT: What would you like to tell me?

18 MR. TERRELL McCOY: We subpoenaed a James
19 Fowler. He or she is a dispatcher that works for the
20 North Charleston police department, but I found out that
21 there were two J. Fowlers. I don't know how that
22 happened. They got two J. Fowlers that work for the
23 North Charleston police department, so the subpoena went
24 to another J. Fowler, and I needed that witness to
25 testify that a female made the call to the 911 dispatcher

1 because it was said that a male made that call.

2 I want the record to show a female called at
3 5:49 stating that her door got kicked in and not a male,
4 and I needed that testimony. They're saying that person
5 doesn't work for the North Charleston police department
6 no more. They said it's two of them work there, and --
7 but they said she's on leave and they don't want --
8 they're not going to allow her to testify. State is not
9 going to allow her to testify, but I subpoenaed her.

10 THE COURT: Have you been able to subpoena
11 the correct witness?

12 MS. PROCTOR: Let me clear it up.

13 MR. TERRELL McCOY: I think it's only one.

14 MS. PROCTOR: There are two, but we
15 subpoenaed the wrong one. I had asked the state if they
16 would stipulate to the report so we wouldn't need to get
17 her, and the state said even if she came, they are
18 objecting to her testimony anyway because it would be
19 hearsay for what she is having to say. ~~NO Excited Utterance~~

20 So I wanted to clear that up so we could move ^{(1) PRESENT SENSE IMPRESSION}

21 on with the case. If they're going to object to her
22 testifying anyway and she's not allowed to, then we don't
23 need to go find her. She's dispatch.

24 THE COURT: She's a dispatcher? You don't
25 have a 911 tape?

violation

803 (1)(2)(3)

Speedy trial

This evidence is necessary to impeach witness

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. TERRELL McCOY: I subpoenaed the 911 tape. If you look at the witness list on the bottom, it have the 911 dispatcher tape from March 25, 2006. Now they're saying they don't -- what you tell me? They don't record them? I know they record -- those calls are supposed to be recorded, and I wanted that recorded to bring it up so the jury could hear that recording and hear that a female did call and advise that someone kicked in her door.

MS. PROCTOR: We had tried three years ago to find the dispatch tape. We never were able to get the 911 tape, and I don't believe the solicitor's office ever had the 911 tape either. All we have are the writings of what was on --

MR. TERRELL McCOY: What was said.

MS. PROCTOR: What was said during the dispatch, saying a female said the door was kicked in. It's my understanding the state is going to say that was hearsay, right?

MR. WETMORE: That's correct, Judge. Ms. Proctor asked if I would stipulate to the information that the dispatch call received, and I said that I wouldn't because it would come from a caller, and to get that evidence in, he would need to put the caller on the stand to say what she saw.

Speedy Trial Violation

Prosecutorial Misconduct
bad faith

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I have never heard a 911 tape. I know they're kept for a certain period of time and then they're destroyed. It's all digital, to my understanding, and certainly three years have passed. I don't know if it's there or not, but I don't have it.

THE COURT: Have you checked with North Charleston to see if they have it?

MR. WETMORE: I have not asked for it, nor have I subpoenaed, no, sir.

THE COURT: Have you?

MR. TERRELL McCOY: I asked for it.

MS. PROCTOR: When there was a previous solicitor in the case, I said were you getting the 911 tape? It's coming. There were problems with delay, and by the time, I think, they realized they didn't have it, I think it's been destroyed, because we never could find one.

THE COURT: Back when you used to represent him, y'all looked for it?

MS. PROCTOR: Yes, and I have gone through my old notes about how many times I had asked Greg Voigt, do you have the 911 tape? Are we going to get the 911 tape? And we thought -- I thought he had it, but what we've got, what he had was the written words off the 911 tape. We still don't know who the person is that called in. We

The 911 tape would provide a name of the person who called the

police.

1 assume it was maybe one of the neighbors.

2 THE COURT: All right. So let me see if I
3 understand this right, Mr. Wetmore. You're objecting to
4 the witness testifying, not to what the contents were,
5 but that it was a male or female voice?

6 MR. PETER McCOY: No, Your Honor. The piece
7 of paper Ms. Proctor showed you was -- it's called a CAD
8 report, or a dispatch report, and they asked if I would
9 stipulate to a female call, advising she heard someone
10 banging on the door, and the door flew up and a black
11 male was C2, which I assume is code for shot. She does
12 not know who he is.

13 And I said I would not stipulate to that
14 information because I don't know who said this. I don't
15 think that person is here to testify to cross-examine, so
16 I couldn't stipulate that that information was correct
17 because I think it would be hearsay.

18 MS. PROCTOR: We weren't saying it was a
19 female called in. We're just saying the sheet of paper
20 that says what the dispatch received --

21 THE COURT: We couldn't bring somebody in
22 just to read what is on that.

23 MR. TERRELL McCOY: I wanted the 911 tape to
24 be heard.

25 THE COURT: I understand, but from what I

1 understand, it doesn't exist. Miss Proctor said back
2 when she used to represent you, her office tried to
3 obtain it, and they were informed it didn't exist. So,
4 again, it's one of those deals where if you had it, I
5 would let you play it probably, but if doesn't exist, I
6 can't create it. Okay?

7 MR. TERRELL McCOY: Yes, sir.

8 THE COURT: Now, do you have any other
9 witnesses that you intend to call?

10 MR. TERRELL McCOY: No, sir.

11 THE COURT: Have you made a decision about
12 whether or not you want to testify?

13 MR. TERRELL McCOY: Yes, sir. I'm not going
14 to testify.

15 THE COURT: Let me go over a couple of things
16 with you, I'm required to go over with you. You
17 understand when you are arrested in this country that you
18 do not have to testify.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You understand that you don't
21 have to prove anything.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. And the state is
24 required to prove your guilt beyond a reasonable doubt.
25 Do you understand that?

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON
COURT OF COMMON PLEAS

RECEIVED
OCT 11 2016
SC Court of Appeals

Diane Goodstein, Circuit Court Judge

Case NO. 14-CP-10-7706

Terrell L. McCoy, Appellant

v.

North Charleston Police Department, Sergeant Thomas
Deckard, Respondent

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD
ON APPEAL

Appellant proposes the following be included in
the Record on Appeal:

1. Order of May 13, 2015;
2. Order of February 23, 2016;
3. Complaint;
4. May 7, 2015 transcript of proceeding pp. 2-3; 6-9;

10-12; pp. 13-20;

6. December 2, 2016 transcript of proceeding pp. 4-6; 7-9;
10-11; 16-18; 19-26;

Plaintiff's Exhibits: 1; 2; 3;

I Certify that this designation contains no matter
which is irrelevant to this appeal.

September 29, 2016

15/ Terrell McCoy
Terrell McCoy
Leiber Correctional Inst.
PO ~~Box~~ 205
Ridgeville, SC 29472

Certificate of Counsel

The Undersigned hereby Certifies that the Record on Appeal
Contains all materials proposed to be included by any of
the parties and not any other material

September 29, 2014

151 Lemell mcaig
LCI
P.O. Box 205
Ridgeville, SC 29472

RECEIVED

OCT 11 2016

SC Court of Appeals