

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM CRAIG CAUGHMAN,

APPELLANT DEC 28 2017

APPELLATE CASE NO. 2015-001867

SC Court of Appeals

MOTION TO HOLD APPEAL IN ABEYANCE

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order placing Appellant's appeal in abeyance pending receipt of a second reconstruction hearing transcript. In support of this motion, Appellant alleges the following:

- 1) On June 21, 2016, prior appellate counsel moved to hold this appeal in abeyance and requested a remand to the circuit court for reconstruction of the record.
- 2) On August 11, 2016, this Court granted Appellant's motion and held the appeal in abeyance while the matter was remanded to the circuit court for reconstruction.
- 3) While this appeal was held in abeyance, two reconstruction hearings took place before the Honorable Clifton Newman: one on September 16, 2016, and one on May 1, 2017.

4) An Order was issued by Judge Newman on May 26, 2017 (Exhibit A). Judge Newman ordered that the transcripts from both hearings, September 16, 2016 and May 1, 2017 should be obtained for submission to this Court. He ordered that “the transcripts combined with other evidence submitted at the reconstruction hearing and the Defendant’s written request for jury charges, sufficiently reconstruct the record so as to provide a full and complete record which satisfies the interests of due process and fundamental fairness as to allow for a meaningful appellate review.” (p. 12).

5) This Court informed the parties via letter on October 20, 2017 that this appeal was no longer held in abeyance.

6) Due to inadvertency, prior appellate counsel did not order the transcript from the May 1, 2017 hearing.

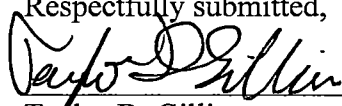
7) That transcript has now been ordered. The initial due date is February 5, 2018. (Exhibit B).

8) The undersigned spoke with opposing counsel and received consent for this motion.

9) The undersigned will notify this Court immediately when the transcript is received.

The undersigned will provide updates to this Court while the matter is held in abeyance.

WHEREFORE, in order to comply with Judge Newman’s Order and to ensure that the record is complete, Appellant respectfully requests that this Court hold the timelines in abeyance for his appeal until the transcript from the May 1, 2017 hearing is received.

Respectfully submitted,


Taylor D. Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of December, 2017.

Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
State of South Carolina,)
)
v.)
)
William Craig Caughman,)
)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS

Indictment Number: 2010-GS-32-2294
(Appellate Case No. 2015-001867)

ORDER

This matter came before this Court pursuant to an Order to Reconstruct the Record which was issued by the South Carolina Court of Appeals on August 11, 2016. On September 16, 2016, a reconstruction hearing was convened at the Lexington County Courthouse. The Defendant was present at the hearing and was represented by Assistant Appellate Defender John P. Strom, Esquire, of the South Carolina Office of Indigent Defense. The State was represented by J. Benjamin Aplin, Senior Assistant Deputy Attorney General, and L. Suzanne Mayes, Assistant Solicitor for the Eleventh Judicial Circuit.

The Defendant is currently confined but presented the testimony of his trial attorney H. Wayne Floyd, Esquire. He also introduced, without objection, a copy of Mr. Floyd's hand written notes from the trial. Also testifying at the hearing was Assistant Solicitor L. Suzanne Mayes. In addition, this Court had before it: (1) a copy of the transcript of Defendant's May 20-23, 2013 trial, which included notations from the court reporter indicating which portions were inaudible or otherwise unable to be transcribed;¹ (2) a copy of the transcript of this

¹ The trial transcript is divided into two separate volumes due to a change in court

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Court's May 21, 2015, hearing on Defendant's post-trial motions for a new trial and for reconsideration of the sentence; (3) Defendant's June 17, 2016, "Motion to Hold Appeal in Abeyance and Motion to Remand for Reconstruction of the Record" which was filed with the Court of Appeals; (4) the State's July 12, 2016, "Return to Motion to Remand for Reconstruction of the Record" which was filed with the Court of Appeals; and (5) the August 11, 2016, Order of the Court of Appeals granting Defendant's motion and remanding to this Court for reconstruction of the record.

On May 1, 2017, this Court convened a follow-up hearing at the Lexington County Courthouse to finalize the reconstruction proceedings and render a decision. The Defendant was again present and represented by Mr. Strom and the State was again represented by Mr. Aplin. Also present were Mr. Floyd and Ms. Mayes.

PROCEDURAL HISTORY

The Defendant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. He was indicted at the May, 2013 term of the grand jury for Lexington County for "hit and run accident resulting in death" under Section 56-5-1210 of the South Carolina Code. He was represented by H. Wayne Floyd, Esquire. On May 20-23, 2013, Defendant proceeded to a jury trial before this Court pursuant to which he was found guilty as indicted. He was sentenced to twenty (20) years' imprisonment.

reporters. The first volume covers the first day of trial, May 20, 2013, and is paginated 1-155, and the second volume is of the remainder of trial, May 21-23, 2013, and is paginated 1-329.

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A notice of appeal was filed and served on Defendant's behalf and on October 22, 2015, Defendant/Appellant timely requested a complete copy of the transcript of his trial. On June 17, 2016, Defendant submitted a "Motion to Hold Appeal in Abeyance and Motion to Remand for Reconstruction of the Record" with the Court of Appeals. On July 12, 2016, the State submitted a "Return to Motion to Remand for Reconstruction of the Record" with the Court of Appeals opposing remand for reconstruction. In an Order filed August 11, 2016, the Court of Appeals granted Defendant's motion and remanded this matter to this Court for reconstruction of the missing portions of the record.

In his motion to the Court of Appeals, Defendant identified four "missing" portions of the trial which were not transcribed because, as indicated by the court reporter, they were inaudible.

These consisted of:

- (1) "An indeterminate amount of arguments by defense counsel and the prosecution regarding the validity of a multi-jurisdictional police taskforce agreement, which the police relied on for jurisdiction when seeking a search warrant of [Defendant's] residence";
- (2) Closing arguments;
- (3) "Portions of the trial testimony of Dr. Elizabeth Moffatt; and
- (4) "Portions of arguments between defense counsel and the prosecutor about the correct interpretation of the hit and run resulting in death statute."

At the reconstruction hearing, Defendant raised two additional concerns about missing portions of the record, specifically in regard to: (1) a discussion at trial about his requests to charge, which this Court ultimately declined to charge to the jury, and (2) a portion of the testimony of State's witness Amy Stephens. Without objection from the State, this Court left the

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record of the reconstruction hearing open to allow Defendant to obtain copies of the written requests to charge from Mr. Floyd's file and include them in the reconstructed record.

Defendant subsequently submitted eight written requests to charge, numbered Defendant's #1, #2, #3, #4, #5, #7, #8, and #9, which are now before the Court. There was no Defendant's #6 in Mr. Floyd's file and consequently, Appellant did not submit Defendant's #6 to this Court. At the May 1, 2017, follow-up hearing; however, it was discovered that sometime before the initial September 16, 2016, reconstruction hearing, this Court had been sent an email from Mr. Floyd's office with an attached copy of his post-trial motions for a new trial and for reconsideration of his sentence. Those motions included a copy of Defendant's #6, a requested jury charge on giving "the benefit of any doubt" to the Defendant. As a result of this discovery, the parties agreed to add it to the reconstruction proceedings and all nine of Defendant's requests to charge are now part of the record before this Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has had the opportunity to review the record in its entirety and has heard the testimony at the reconstruction hearing. The Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law in response to the Court Of Appeals Order of August 11, 2016.

I.

RECONSTRUCTED RECORD

A reconstructed record on appeal is only sufficient if it allows for meaningful appellate review. State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 274-75 (Ct. App. 2007). A new

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trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review. Id.

A. Multi-Jurisdictional Task Force Agreement

The Defendant complained to the Court of Appeals that the transcript omits: “an indeterminate amount of arguments by defense counsel and the prosecution regarding the validity of a multi-jurisdictional police taskforce agreement, which the police relied on for jurisdiction when seeking a search warrant of [Defendant’s] residence.” The Court finds that a review of pages 271-76 of the transcript reveals that immediately prior to the Court denying Defendant’s motion to suppress, a “colloquy between the Court and Mr. Floyd that was not audible” was not transcribed. However, prior to this colloquy, Mr. Floyd noted: “We have previously argued that motion.” As the trial judge, I agreed stating: “Yes, sir, the Court heard argument on the issue yesterday concerning this agency agreement” and “We spent a good bit of time on that issued yesterday, and whether the agency agreement was signed by County Council or the required officials and all of that, and who had to approve the agreement.”

At the reconstruction hearing the parties agreed that pages 104-129 of the May 21-23, 2013, trial transcript reflect the preceding day’s arguments regarding the search warrant and the Multi-Jurisdictional Task Force Agreement. Mr. Floyd testified that to the best of his recollection, the transcribed arguments articulate the particular grounds he raised at trial for seeking to suppress evidence gathered pursuant to the search warrant obtained as a result of the agreement. The Court finds that the trial transcript combined with the testimony offered at the reconstruction hearing sufficiently reconstructs the record of the missing portions of Defendant’s argument, the State’s response, and the Court’s ruling, so as to provide an adequate record for

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meaningful appellate review.

B. Testimony of Dr. Elizabeth Moffatt

The Defendant asserts: "Additional missing sections of the trial transcript include portions of the trial testimony of Dr. Elizabeth Moffatt" as well as "arguments on objections by defense counsel related to Dr. Moffatt's testimony." The Court finds that a review of pages 196 to 210 of the May 21-23, 2013, of the trial transcript demonstrate that in each instance where Dr. Moffatt's testimony was inaudible, either the solicitor or the Court asked her to speak up and repeat her testimony, or the particular answer was not germane to any possible issue on appeal. The Court finds the inaudible portions of Dr. Moffatt's testimony would not impact Appellant's ability to seek meaningful appellate review. Nevertheless, the Court heard testimony on the missing portions of Dr. Moffatt's testimony at the reconstruction hearing and now finds that to the extent it was lacking, it has been adequately reconstructed so as to provide an adequate record for meaningful appellate review.

As to the objections raised to Dr. Moffatt's testimony, particular attention was focused on two objections the Defendant made at trial, one that the State had not sufficiently disclosed documents pursuant to Rule 5, SCRCrimP, and that Dr. Moffatt's testimony was hearsay. The Court finds the existing record on pages 196 to 203 of the May 21-23, 2013, of the trial transcript combined with the testimony at the reconstruction hearing adequately reflect Dr. Moffatt's testimony, Defendant's objections to that testimony, the State's responses to those objections, and the rulings of this Court. The testimony of Dr. Moffatt and the Defendant's objections to that testimony were sufficiently reconstructed to allow for meaningful appellate review.

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C. Statutory Interpretation of § 56-5-1210

The Defendant states that “portions of arguments between defense counsel and the prosecutor about the correct interpretation of the hit and run resulting in death statute were inaudible.” However, this Court finds that a review of pages 281 to 283 of the May 21-23, 2013, of the trial transcript reveals that the only portion inaudible is Mr. Floyd’s explanation for his assertion that: “number two we think is not the wording of the statute.” Immediately after the inaudible portion, the solicitor specifically identified the challenged wording in her response by stating: “I do not believe the interpretation of the word immediately. It is the State’s position that it means the driver shall immediately stop, speaking of the duty of the driver to stop, rather than the immediate death of the victim. Beyond that, we believe the wording of the statute is clear. Mr. Floyd would give the wrong application of the wording.” The Court finds the statute itself, coupled with the solicitor’s response and the testimony offered at the reconstruction hearing provide sufficient clarity of Defendant’s argument at trial to allow for meaningful appellate review.

D. Closing Arguments

The Defendant notes that: “none of the prosecution’s or defense’s closing arguments were transcribed.” This Court finds that although the closing arguments were not transcribed, the court reporter notes at page 292 of the transcript that: “There were no objections made during these statements.” Thus, the Court concludes where no objections were made to the closing arguments, there are no issues preserved for appellate review.

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At the reconstruction hearing, Defendant's counsel suggested that without a transcript of the closing arguments there is no way to confirm that the court reporter's notation was correct. The Court finds however, that there is no evidence to suggest it is not.

Also at the reconstruction hearing and at the follow-up hearing, Defendant's counsel argued that a transcript of the closing arguments is necessary for adequate appellate review because it could impact an analysis of a claim of harmless error. The Court disagrees and finds the record that exists along with the portions reconstructed provide a sufficient record for appellate review, including a review of claims of harmless error if raised on appeal. As to the substance of the State's close, the Court finds the testimony of Solicitor sufficiently reconstructed closing argument to allow for meaningful appellate review.

E. Defendant's Requests to Charge

Following the reconstruction hearing, the Defendant submitted eight written requests to charge, numbered Defendant's #1, #2, #3, #4, #5, #7, #8, and #9. Defendant's #6 was subsequently discovered and, with the consent of the parties, accepted into the record at the May 1, 2017 follow-up hearing; thus, all nine written requests to charge are now before the Court. The Court finds these written requests to charge sufficiently and adequately reconstruct the substance of the Defendant's requests to charge as they were presented to and rejected by the Court and therefore, provide for meaningful appellate review of any issues regarding the jury charge.

F. Testimony of Amy Stephens

At the reconstruction hearing, the Defendant directed Mr. Floyd's attention to page 218 of the May 21-23, 2013, trial transcript and questioned him about the missing direct examination

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testimony of witness Amy Stephens. (Reconstruction Tr.p.26). The Court notes the transcript includes the following notation:

TRANSCRIPTION NOTE: Audio portion not on disc which next has Witness Amy Stephens on the stand. Direct Examination of witness by Solicitor not present. Audio beginning with Cross Examination of witness by Mr. Floyd.

(May 21-23, 2013 Tr.p.218, lines 21-24). It then includes approximately 19 lines of cross-examination by Mr. Floyd indicating Ms. Stephens was employed as a forensic technician at SLED during which she explained her role in receiving items that were submitted to SLED for forensic testing. (May 21-23, 2013 Tr.p.218-p.219).

During the reconstruction hearing, Mr. Floyd first testified he had no independent recollection as to the substance of Stephens' testimony or whether he objected to any of her testimony. He opined that based on her appearance immediately before State's witness Michael Moskal, it was possible she was a chain-of-evidence witness because Moskal testified about paint chips recovered from the victim's motorcycle, which were a "pretty significant" issue in the case. Mr. Floyd testified he made an objection to the chain of evidence, and assumes he repeated the objection with Stephens, but could not specifically remember doing so, or what that particular objection might have been. (Reconstruction Tr.p.26-p.30). On cross-examination, Mr. Floyd explained the significance of the paint chips to the case, but noted they were not introduced into evidence and was unable to articulate what "chain-of-evidence" objection he would have made in regard to Stephens testimony. (Reconstruction Tr.p.30-p.33). The Court sought further explanation from Mr. Strom in regard to the significance of Stephens' testimony and the need for reconstruction for possible appellate issues and noted the brevity of Mr. Floyd's

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cross-examination as indicative of the non-substantive nature of her missing testimony on direct. (Reconstruction Tr.p.33-p.38).

Ms. Mayes was called to the stand to assist with reconstruction. She testified that Ms. Stephens is the evidence log-in technician at SLED, which means she works in the evidence lobby area where she receives any evidence being delivered from other law enforcement agencies, logs that evidence in, and assigns it a SLED lab number for tracking. Ms. Mayes explained that Stephens does not test evidence or have any involvement in any case besides logging the evidence in and having it sent to the appropriate analyst. Ms. Mayes testified her recollection was that Stephens trial testimony was limited to chain of custody and would merely have consisted of a description of her logging the evidence delivered by the relevant law enforcement agency, and her releasing that evidence to a SLED analyst for testing. Ms. Mayes testified that in the Defendant's case, Stephens would have testified the evidence in question went to Michael Moskal for testing. She explained Moskal is the trace analyst who conducted all of the testing of paint samples in this case and that the State would have had to make a showing the chain of custody of that evidence was complete prior to Agent Moskal giving his opinion as to the results of the trace analysis. Ms. Mayes then reviewed the cross-examination of Ms. Stephens that is transcribed and testified, it does not appear that any of Mr. Floyd's cross was missing. (Reconstruction Tr.p.59-p.62). Under cross-examination from Mr. Strom, Ms. Mayes gave additional details of the specific evidence collected and tested in the case, which helped clarify Ms. Stephens limited role in this case. (Reconstruction Tr.p.62-p.64).

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At the follow-up hearing, the parties presented additional arguments concerning Ms. Stephens' testimony, Mr. Floyd's purported objection to the chain-of-evidence, and the import of the testimony in regard to possible appellate issues.

This Court concludes the testimony of Solicitor Mayes at the reconstruction hearing sufficiently reconstructed the substance of Stephens' direct testimony to allow for meaningful appellate review. In regard to the Defendant's alleged objection to testimony about the paint chips on chain-of-custody grounds, the Court finds that any such objection, if made, would have been made in other portions of the record which have been transcribed. Further, any attack on the integrity of Stephens' role in the chain of custody would have been made during cross-examination.

Based on the testimony at the reconstruction hearing, the Court finds the transcription of Ms. Stephens' cross-examination testimony from trial is complete. Based on the cursory nature of the cross-examination, the Court concludes Defendant has failed to demonstrate any prejudice flowing from the lack of a transcript of Ms. Stephens' direct examination testimony. This portion of the record has been sufficiently reconstructed to allow for meaningful appellate review.

CONCLUSION

The Court convened the reconstruction hearing on September 16, 2016, in Lexington County and devoted significant time in reviewing the existing trial transcript as well as hearing testimony and the presentation of other evidence. The Court concludes that the matters presented at the reconstruction hearing regarding the issues alleged in Defendant's motion to remand for reconstruction are addressed in this Order. Based on the foregoing, the Court concludes that, a

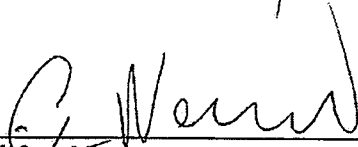
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diligent and good faith effort has been made to reconstruct the missing portions of the record. The missing portions of the record have been sufficiently reconstructed. This Court finds the record is now sufficiently reconstructed to allow the appellate court to conduct a meaningful review.

IT IS THEREFORE ORDERED:

1. The transcripts of both the September 16, 2016, reconstruction hearing and the May 1, 2017, follow-up hearing be obtained by Defendant for submission to the Court of Appeals;
2. The transcripts combined with other evidence submitted at the reconstruction hearing and Defendant's written request for jury charges, sufficiently reconstruct the record so as to provide a full and complete record which satisfies the interests of due process and fundamental fairness so as to allow for a meaningful appellate review; and
3. The Defendant is remanded to the custody of the Department of Corrections pending resolution of his direct appeal.

AND IT IS SO ORDERED this 25th day of May, 2017



Clifton Newman
Trial & Reconstruction Hearing Judge
Eleventh Judicial Circuit

Columbia, South Carolina

Exhibit B



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401

Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

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

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DEC 06 2017
SC Court of Appeals

December 06, 2017

Ms. Stacy L. Sheppard
Circuit Court Reporter
P. O. Box 345
Lexington, SC 29071

Dear Ms. Sheppard:

Please provide us with the following transcript:

The State v. William Craig Caughman
Appellate Case No. 2015-001867
County: Lexington
Presiding Judge: Clifton Newman

Case #: 10-GS-32-2294
Date of Trial: May 1, 2017

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

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

SCCID prefers that all transcripts are sent via certified mail. If you would prefer the convenience of sending transcripts electronically, please use SCCID's file transfer servers found by navigating to <https://scfiledrop.sc.gov>. For further assistance or questions with this service, please contact Ryan Cole at reole@sccid.sc.gov or by phone at 803-734-1239.

To ensure prompt payment, please sign and complete the enclosed form and include the original criminal case number (indictment number) where the space is provided.

Sincerely,

Chris Swenski
Administrative Assistant

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Clifton Newman, Circuit Court Judge

WILLIAM CRAIG CAUGHMAN,

PETITIONER,

v.


STATE OF SOUTH CAROLINA,

RESPONDENT.

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SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion to Hold Appeal in Abeyance in the above referenced case has been served upon opposing counsel, J. Benjamin Aplin, Esquire and William Craig Caughman, #355503 at Broad River Correctional Institution this 28th day of December, 2017.



Taylor D. Gilliam
Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 28th day of December, 2017.

Kevin Mendel (L.S.)
Notary Public for South Carolina

My Commission Expires: July 3, 2023



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

December 28, 2017

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

RECEIVED

DEC 28 2017

SC Court of Appeals

Re: The State v. William Craig Caughman

Dear Ms. Kitchings:

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

Sincerely,

Taylor D. Gilliam
Appellate Defender

TDG/tg

Enclosure

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