

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No.: 2016-000650

RECEIVED
MAR 14 2018
SC Court of Appeals

Terrell L McCoy, 256070, Appellant

v.

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

**RESPONDENT'S RETURN
TO PETITION FOR RE-HEARING**

ROBIN L. JACKSON
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Attorney for Respondent

Mr. McCoy filed a Petition for Re-hearing on March 1, 2018, after this honorable court affirmed the dismissal of his Complaint based on his failure to file within the applicable statute of limitations period. McCoy now requests that the court reconsider its decision because the court “overlooked and misapprehended” his argument. He bases this petition on his position that because he argued about his allegation of fraud in the lower court, and because he is not a lawyer, the court should read into his argument something that is not actually there.

McCoy’s petition should be denied for several reasons. First, McCoy was clearly aware of the destruction of the 911 recording at his 2009 re-trial. During that trial, there was a hearing relating to the testimony of the dispatcher, during which the solicitor advised the court that he did not have it and had not listened to it and that it was likely taped over because it was more than three years old at that time. The court advised McCoy, who was representing himself, that it did not exist and therefore, it could not be played at the trial. McCoy’s response to the court was “Yes sir.” It was on that basis that the trial court found that McCoy was on notice as of February 6, 2009.

Further, although McCoy does argue fraud, this is an intentional tort and would be directed the individual defendant. The only individual defendant in this case was Scott Deckard. Mr. McCoy only filed his notice of appeal as to the City of North Charleston. He did not appeal the ruling dismissing his claim against Scott Deckard. (See Notice of Appeal). Therefore, this argument is not properly before this court and should not be considered. There is also no link between Deckard and the recording. Deckard never worked for dispatch and had no control over dispatch. Finally, although McCoy spent much of his initial brief arguing about extrinsic fraud, he did not argue that at the trial court level. The court was

correct in determining that the issue was improperly raised for the first time on appeal.

For all of these reasons, the respondent City of North Charleston asserts that the trial court properly dismissed the Complaint and the Court of Appeals properly affirmed that ruling. Respondent asks the court to deny the petition for re-hearing.



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March 12, 2018

THE STATE OF SOUTH CAROLINA
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Terrell L McCoy, Appellant

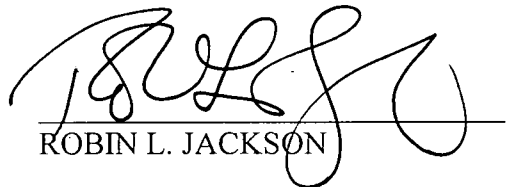
v.

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Respondent's Reply to Appellant's Petition for Re-Hearing has been served upon the pro se appellant by mailing a copy properly addressed with sufficient postage affixed thereto this 12th day of March 2018, to the following:

Mr. Terrell L. McCoy, #256070
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899


ROBIN L. JACKSON


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March 12, 2018

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

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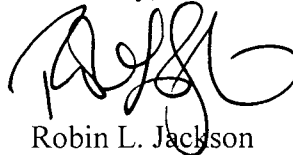
RE: McCoy v. North Charleston Police Department et al.
Case No.: 14-CP-10-7706

Dear Madam Clerk:

Please find enclosed the original and seven (7) copies of Respondent's Return to Petition for Re-Hearing. Please file these and return one file stamped copy to me in the enclosed self addressed stamped envelope.

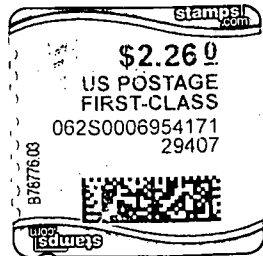
I thank you, and I am,

Sincerely,



Robin L. Jackson

RLJ/mbk
Enclosure
cc: Inmate Terrell McCoy



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Senn Legal, LLC
P.O. Box 12279
Charleston, SC 29422

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