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Dated, 7-15-2018

S. Terry McCall 233236
Livesay Corr. Inst

S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

P.O. Box 580
Una, S.C. 29378

Duggan & Hughes, LLC
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JUL 18 2018

SC Court of Appeals

Terry McCall # 233236

Livesay Corr. Inst

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P.O. Box 580

Una, S.C.

29378

7-15-18

Date

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JUL 18 2018

SC Court of Appeals

Re: Court Transcript for Appellate Case
No: 2018-001020

Dear Clerk,

Enclosed please find the
Court transcript for the case of Terry
Edward McCall v. Barnes Towing: 2018-001020

I requested a out of Time to obtain the
Transcript, However I've never received that
Order yet. But here it is, just
received it At the prison I'm incarcerated
At, Livesay Corr Inst.

Sincerely,
Mr Terry McCall

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	2017-CP-23-07401
COUNTY OF GREENVILLE)	
)	
)	
)	
TERRY EDWARD McCALL,)	
PLAINTIFF,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
BARNES TOWING,)	
DEFENDANT.)	
_____)	

April 12, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, JUDGE

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

TERRY EDWARD McCALL
Pro Se

DANIEL ROPER HUGHES, ESQ.
Attorney for the Defendant

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JUL 18 2018

SC Court of Appeals

CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 9:42 a.m.)

THE COURT: If I'm not mistaken, the first case is Terry Edward McCall vs. Barnes Towing. I'll be glad to hear from the moving party.

MR. McCALL: Well, I just got this summary, Your Honor. There is not a witness's return. This case consists of ---

THE COURT: Mr. McCall, just as a matter of form, I know you probably don't appear in court representing yourself, what I'm going to ask you to do is stand up when you talk. And the first thing I'm going to ask you to do is raise your right hand as the clerk administers the oath.

MR. McCALL: Is there any way I can get one of these off?

THE COURT: I think that that's a security matter. We'll be able to work around that.

(WHEREUPON, TERRY EDWARD McCALL is duly sworn)

THE COURT: Are you under the influence of any drugs or alcohol here today?

MR. McCALL: No, sir.

THE COURT: Are you experiencing any kind of physical or mental problem that can prevent you from understanding

1 what's going on here today?

2 MR. McCALL: No, sir.

3 THE COURT: All right. You're standing before me
4 representing yourself. You have an absolute right to
5 retain counsel to represent you or you can proceed forward
6 by yourself. You've got an absolute constitutional right
7 to represent yourself. Do you want to hire a lawyer or do
8 you want to represent yourself?

9 MR. McCALL: I'll represent myself.

10 THE COURT: Okay. How far did you go in school?

11 MR. McCALL: I went through high school, two years --
12 two years of college.

13 THE COURT: Can you read and write?

14 MR. McCALL: I can.

15 THE COURT: Do you understand what you're doing here
16 today?

17 MR. McCALL: I do.

18 THE COURT: Over your lifetime, have you been
19 involved in matters before the Court before? Obviously,
20 it appears that you're incarcerated now. Have you had
21 some experience with the legal system?

22 MR. McCALL: I have some. Uh-huh.

23 THE COURT: All right. Do you know that when you're
24 appearing in Common Pleas Court, there are some risks? If
25 you have not attended law school and if you're proceeding

1 forward pro se, you're going to be charged with the
2 responsibility of knowing the procedural and the
3 substantive law just as if you were a lawyer. You
4 understand that, don't you?

5 MR. McCALL: Yes, sir.

6 THE COURT: All right. And you want to proceed
7 forward pro se?

8 MR. McCALL: Yes, sir.

9 THE COURT: I'll allow you to do so, and I'll be glad
10 to hear from you. I understand it's your motion.

11 MR. McCALL: All right.

12 THE COURT: You can just remain standing. And
13 defense counsel, they're going to remain standing when
14 they talk. That's just a matter of form, so let's stick
15 with that.

16 MR. McCALL: All right, Your Honor.

17 This consists of a matter that when it went to trial,
18 that I filed my notice of appeal.

19 THE COURT: Well, tell me what type case it was
20 first.

21 MR. McCALL: Okay. This case came about, it was
22 actually, it came about as a repairman's lien, okay, and
23 they sold my vehicle without giving me notice. Okay?

24 THE COURT: Right.

25 MR. McCALL: During the time that I filed this

1 complaint, in the middle of -- before we were heard, say,
2 five months down the road, I filed a motion to set aside
3 the default judgment that the judge had granted them to
4 sell the vehicle, get the title. The Court did grant that
5 motion. Actually, I went back on a motion of
6 reconsideration. The first one he denied. He amplified
7 the situation and he granted it. So he found that Barnes
8 Towing didn't give notice, therefore, the authorization
9 was illegal because he gave false affidavit to the Court
10 saying that he gave me notice.

11 So when I went to trial on it, I thought that I was
12 basically going to be there just for damages and, you
13 know, maybe enter the order that they gave. And defense
14 counsel, Mr. Duggan, which is not here, he spoke up and
15 told the judge, said, No. We need to go through a trial
16 because he's going to have to prove that, you know, it was
17 a breach of duty.

18 Well, when I started to make the arguments about the
19 breach of duty as far as the notice and I'd like to enter
20 this order, he made the argument that I couldn't.

21 And so that's how it all got started. Okay. It was
22 a repairman's lien. Okay. And then I was going to take
23 it by, you know, the pretrial motions and stuff, but you
24 just asked me how it got started, and that's what --
25 that's what this case consists of.

1 THE COURT: All right. That's how it got started.

2 And you ---

3 MR. McCALL: There was never any notice given.

4 THE COURT: Obviously, this is a civil matter, but
5 you appear to be incarcerated. What are you incarcerated
6 for?

7 MR. McCALL: I'm in here on a felony DUI.

8 THE COURT: Oh, okay. So this ---

9 MR. McCALL: And this is about the vehicle that got
10 taken, yeah. This was my vehicle that my property was in.
11 I was moving at the time ---

12 THE COURT: All right.

13 MR. McCALL: --- and this is what this is all about.

14 THE COURT: Okay. So ---

15 MR. McCALL: They took my vehicle, and the MAIT team
16 had it, and then he was supposed to notify me. I went
17 over there to pay for it to get it back, he wouldn't give
18 it to me, and all this came about that way.

19 THE COURT: All right. And all this -- there was a
20 felony DUI. Apparently, someone was hurt.

21 MR. McCALL: Yes, sir. They had an injury. It
22 wasn't death.

23 THE COURT: Okay. And you're serving how long in
24 prison?

25 MR. McCALL: I had 15 years.

1 THE COURT: Okay. All right. Is that an 85 percent?

2 MR. McCALL: No, sir. It's 50.

3 THE COURT: It's not. It's 15.

4 MR. McCALL: Uh-huh.

5 THE COURT: All right. Very good. All right.

6 MR. McCALL: But now this had -- this came about
7 separately. This wasn't nothing to do with it, my trial
8 or nothing, so ---

9 THE COURT: Right.

10 MR. McCALL: This came after the fact. I found out
11 that they took my vehicle and sold it and never notified
12 me.

13 THE COURT: All right. I'm going to allow you in
14 great detail to set forth what your issues are. I'm going
15 to hear from defense counsel, and he might can help us
16 define the issues a little bit better. And what I'm going
17 to do is I'll recognize you and I'm going to hear you out,
18 hear everything that you have to say. Does that sound
19 fair?

20 MR. McCALL: And that sounds fair. And I appreciate
21 that.

22 THE COURT: Very good.

23 Yes, sir.

24 MR. HUGHES: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. HUGHES: Daniel Hughes here on behalf of Barnes
2 Towing. Mr. Barnes [sic] is correct. My law partner John
3 Duggan, who is on medical leave, actually tried the case,
4 but, of course, I'm prepared here to represent Mr. Barnes
5 on this appeal from Mr. McCall.

6 Just to clarify his opening remarks to you, Barnes
7 Towing towed the vehicle that was involved in the felony
8 DUI case. And under the state statute 56-5-5630, the car
9 sat in his shop for over three years while he was
10 incarcerated, and at about three years after the wreck
11 happened, he filed, went through the process of filing his
12 notice to Mr. Barnes that he was going to sell the
13 vehicle, and he did that. The only thing he did not do is
14 when we were not involved in the case is he didn't publish
15 the notice in the newspaper of general circulation. So
16 based on those grounds, the magistrate judge ---

17 THE COURT: Let me ask you, refresh my memory. He's
18 incarcerated. But I thought there was a statutory
19 provision to serve someone through the Department of
20 Corrections, and there's a method by which you do that,
21 not by publication, particularly in view of the fact that
22 you know where he is. And is there an obligation to get a
23 guardian ad litem?

24 MR. HUGHES: Well ---

25 MR. McCALL: I was out during that time.

1 THE COURT: All right. Now, this is his time to
2 talk. I'm going to hear from you.

3 MR. McCALL: Okay.

4 MR. HUGHES: Well, I'm not contesting the fact that
5 notice was improper to him when the original -- when
6 Mr. Barnes filed the original notice of the garageman's
7 lien.

8 THE COURT: Right.

9 MR. HUGHES: So that irregularity was decided in his
10 favor.

11 THE COURT: Right. He got another shot at it.

12 MR. HUGHES: He got another -- so he sued Mr. Barnes,
13 Barnes Towing.

14 THE COURT: Right.

15 MR. HUGHES: Okay. And then we filed a counterclaim
16 alleging -- setting forth our damages to recover pursuant
17 to the damages allowed in the statute, which is ---

18 THE COURT: Storage and ---

19 MR. HUGHES: --- storage cost, towing cost minus what
20 was -- the proceeds from the sale of the vehicle.

21 Okay. Interestingly, again, I didn't try the case,
22 but there is another state statute in this chapter,
23 56-5-5650, which limits Mr. Barnes' damages to \$500, I'm
24 not sure -- which was the amount of the sale of the
25 vehicle. I'm not sure that was raised at the trial level,

1 but the litigation in this case that went to a jury trial
2 centered around the damages he was alleging in this case.
3 He claimed that he lost a coin collection, baseball cards,
4 sentimental items, and put forth various amounts of his
5 damages.

6 Ultimately, the case, which we contend was a clean
7 trial, the jury denied his claim and awarded our
8 counterclaim in the appropriate amount according to the
9 statute, which is \$1,656. And he set forth ---

10 THE COURT: What are all the legal errors that he is
11 alleging?

12 MR. HUGHES: Well, there are none. He has -- I mean,
13 he doesn't believe that, but there are 12 issues that he
14 has submitted to the Court which was filed January the 8th
15 which he contends were errors of law. And I can go
16 through and address each of those if the Court wishes now,
17 or do you want me to respond to his arguments?

18 THE COURT: Well, I'll hear from you, and then if we
19 need to hear back from you, we'd be happy to do that.

20 MR. HUGHES: His first issue, and I'll do my best to
21 try to, you know, interpret what the argument he -- what
22 the issue he's raising. The first argument deals with
23 whether or not it was proper for us to raise to the jury
24 varying or differing amounts that he submitted as his
25 damages through various pleadings.

1 There are three iterations of his damages, one
2 through the amended complaint, one -- one through the
3 original complaint, one through the amended complaint, and
4 one that he presented at trial. And if you look at the
5 return that Judge Peden filed, you will see those various
6 exhibits that were allowed to go before the jury. And the
7 purpose of that, allowing those exhibits to go before the
8 jury, was to impeach his evidence. He didn't -- to
9 challenge the reliability of the evidence he was
10 presenting at trial. And based on that, Your Honor, that
11 was in the judge's discretion to allow the uncertainty of
12 the damages to go before the jury so they could make the
13 decision whether or not his testimony was credible.

14 The second issue he raises is did the Court allow --
15 err, allow the respondent to enter unfiled exhibits,
16 where, as Your Honor knows, there is no ---

17 THE COURT: Say that again. I'm sorry.

18 MR. HUGHES: Did the Court err, allowing respondent
19 to -- Barnes Towing to enter unfiled, clocked-in exhibits
20 that were never previously filed? As Your Honor knows,
21 there is no requirement for us to prefile our exhibits,
22 and there is no pretrial discovery in magistrate's court.
23 So on that basis, Issue Number 2 is not an abuse of
24 discretion.

25 The third issue is did the Court err in denying

1 Mr. McCall's motion to dismiss our counterclaim, which was
2 duplicative of the repairman's lien that was originally
3 filed and ruled by the Court to be -- the notice was
4 improper? Essentially, he is -- I will take his argument
5 to mean that our counterclaim was res judicata after he
6 filed his complaint. That's also incorrect because the
7 repairman's lien was not decided upon its merits. It was
8 merely overturned based upon -- based on a challenge of
9 the notice provided.

10 So the issues in that case were not decided.

11 THE COURT: So his relief was the fact that he got a
12 new trial.

13 MR. HUGHES: That's correct.

14 THE COURT: It certainly doesn't taint the
15 counterclaim.

16 MR. HUGHES: It does not taint the counterclaim, and
17 we were allowed to go forward and present all evidence
18 pertaining thereto, which we were never allowed to do
19 prior to the jury trial.

20 The fourth issue is did the Court err when it failed
21 to grant his motion to dismiss denying storage fees to
22 respondent? Judge, the amount awarded by the jury was
23 exactly the amount that's allowed by 56-5-5630. We get
24 60 days for our storage fees, which is the maximum amount
25 allowed by the statute, which is \$1,680, \$28 times

1 60 days; the tow charge of \$410; registered letters to
2 him, these next items are costs incurred by Mr. Barnes,
3 \$25.96; a vehicle report of \$6; court cost of \$35. Total
4 is \$2,156.96, and a credit for the amount of the proceeds
5 from the sale of his vehicle of \$500. And the jury
6 awarded us that exact amount of \$1,656.96.

7 So the damages awarded by the jury were proper. So
8 that is also not an abuse of discretion by the trial
9 judge.

10 Mr. Barnes -- I mean Mr. McCall also appears to
11 allege that the jury instructions to the jury were
12 improper. The judge properly charged the repairman's
13 statute, the relevant portions thereto that properly gave
14 the jury notice on what the issues were before them and
15 what they could consider, and they rendered a verdict that
16 met the evidence before them. So the jury instructions
17 were proper, and Mr. Barnes certainly cannot show any
18 prejudice resulting therefrom.

19 Issue Number 7 ---

20 THE COURT: 6 or 7?

21 MR. McCALL: Section 5. You missed 5.

22 MR. HUGHES: Okay. Number 5, yes. Did the Court err
23 when it refused to suppress Mr. Barnes' towed vehicle
24 report? Well, the amount of the tow report is relevant
25 evidence in the case. It shows when the car was towed and

1 the amount of the charges that Mr. Barnes incurred. So
2 that's proper evidence.

3 THE COURT: Okay.

4 MR. HUGHES: So you're right. I skipped Number 5, so
5 this is Number 7. Number 7 is did the Court err denying
6 Mr. McCall his right to argue as evidenced the July -- his
7 motion for reconsideration, the Court's granting of his
8 motion for reconsideration? Well, that issue had already
9 been decided in his favor. It wasn't relevant to the jury
10 to consider at the trial of the merits of his case.

11 THE COURT: All right. Hang on just one second.

12 Okay. Go ahead.

13 MR. HUGHES: Issue Number 8 is did the Court err when
14 it told Mr. McCall he would get back to him about his
15 witnesses he intended to call or never did? I don't have
16 anything in the record about where he attempted to
17 subpoena witnesses, the names of those witnesses. There's
18 nothing in the return regarding his mention to the Court
19 that he wanted to call witnesses and was not allowed to do
20 so. So there's not a basis in the return before you or
21 the record that this was an error on the Court's part. I
22 don't know who he's referring to.

23 Issue Number 9, did the Court allow Mr. Barnes to
24 bring up his felony DUI and subject of the accident and
25 damages?

1 THE COURT: Yeah. Who wanted to bring up the felony
2 DUI?

3 MR. HUGHES: We brought it. Mr. Barnes opened --
4 Mr. McCall opened the door. He got up in his opening
5 statement, and, of course, he was dressed in his prison
6 jumpsuit throughout the trial. And he -- in his opening
7 statement, he told the jury he made a mistake, and he was
8 at fault for the accident and was now paying the price.
9 So he opened the door to the admissibility of the evidence
10 of why he was incarcerated. And subsequent to that, we
11 were able to follow up on his opening the door and get
12 into some evidence regarding why he was in prison.

13 Issue Number 10, did the Court err in denying his
14 directed verdict motion? Your Honor, there was certainly
15 evidence before the jury at that time for them to
16 consider, and it was a jury issue at that point. That's
17 the standard before the Court upon a directed verdict
18 motion, so the Court did not err in denying his motion for
19 a directed verdict.

20 Number 11, did the Court err in granting our
21 counterclaim where the counterclaim failed to establish
22 start or ending storage dates? The invoice sheet
23 established -- failed to establish storage costs
24 inconsistent with his testimony. Your Honor, we put forth
25 credible evidence through the testimony that Mr. Barnes,

1 through documentary evidence as well as his testimony
2 about the damages he incurred, when he towed the vehicle,
3 how many days it stayed on his lot, what his costs were,
4 that was evidence that went -- was credible evidence that
5 went before the jury, and they awarded the exact amount
6 that Mr. Barnes was entitled to. So Number 11 also is not
7 an error or abuse of discretion.

8 The last issue I have is did the Court err when it
9 granted our counterclaim where the counterclaim alleged
10 all court procedures were followed? That's not what our
11 counterclaim said. That's an incorrect statement. Our
12 counterclaim does not allege that all Court procedures
13 were followed.

14 MR. McCALL: Uh-huh. It does.

15 THE COURT: What is his --

16 MR. McCALL: Yeah. It does.

17 THE COURT: Hang on just one second. I will hear
18 from you.

19 MR. McCALL: Okay. Appreciate it.

20 MR. HUGHES: He is saying that our counterclaim
21 alleged all court procedures were followed when we filed
22 our repairman's lien.

23 MR. McCALL: I think what it said, it says ---

24 MR. HUGHES: Well, when the issue of our pursuing a
25 repairman's lien was decided in his favor, the Court

1 ruled, again, I said this four or five times, that there
2 was an irregularity in the notice, therefore it was
3 awarded in his favor, and he was allowed to then proceed
4 and file his complaint against Mr. Barnes. He has not
5 been prejudiced by the improper notice in the original
6 complaint filed by Mr. Barnes.

7 So, again, that also is a -- not an abuse of
8 discretion, not an error of law, and any prior orders
9 regarding Mr. Barnes' original complaint were not germane
10 to this case. And on that basis, Judge, I would ask that
11 you deny his motion for a new trial, deny his motion to
12 remand the case, and uphold the jury's verdict in this
13 case.

14 THE COURT: Mr. McCall, I'll be glad to hear from
15 you.

16 MR. McCALL: Okay. Your Honor, I'd like to say that
17 he was saying that this motion where the judge made the
18 ruling to vacate and set aside the default, that my
19 complaint was filed way before that motion was ever filed.
20 Okay. And in that complaint, I argued notice was one of
21 the arguments that I made, that I didn't get proper
22 notice, and I also argued that in there, in the complaint,
23 that they violated the A, B, C, D, E, F, G of the
24 repairman's lien which covered everything about notice,
25 okay?

1 THE COURT: Mr. McCall ---

2 MR. McCALL: Yes, sir.

3 THE COURT: --- I understand that. I understood that
4 from you before Mr. Hughes even began.

5 MR. McCALL: Yes, sir.

6 THE COURT: There was a flaw in the method of notice.

7 MR. McCALL: Right.

8 THE COURT: You prevailed over that, and the remedy
9 that you get for that is they set aside the default and
10 you were able to get a trial.

11 MR. McCALL: I understand that.

12 THE COURT: That ends that issue. You won on that
13 issue.

14 MR. McCALL: Okay. That's my complaint, too. That
15 was the motion. This is the complaint that I had. Yeah.
16 I just want ---

17 THE COURT: You've made that very clear, and the
18 record's clear on that. But ---

19 MR. McCALL: But he's saying that they followed and
20 done everything correct, okay?

21 THE COURT: Well ---

22 MR. McCALL: But they didn't. And I made that
23 argument in my complaint, not just in the motion.

24 THE COURT: I'm very clear on that issue, and I
25 understand what you're saying, I understand what

1 transpired. And, you know, there are 11 other issues, and
2 I understand that one. Go ahead.

3 MR. McCALL: That's what I'm trying to tell you, that
4 I know notice -- they never produced any evidence that the
5 letter come back. If you'll look at the exhibits, the
6 letter came back unclaimed ---

7 THE COURT: Right.

8 MR. McCALL: --- in my complaint.

9 THE COURT: But the issue ---

10 MR. McCALL: And their exhibits they present, it come
11 back unclaimed. And that's what I'm trying ---

12 THE COURT: All right. The issue with regard to
13 notice is whether or not you are able to appear, assert
14 your claims and defend the lawsuit against you concerning
15 the car.

16 MR. McCALL: Right.

17 THE COURT: All right. The fact of the matter is,
18 you did receive notice because you showed up and
19 participated in the trial. So that issue is moot. All
20 that's been resolved. And guess what? You prevailed on
21 that. So those issues are not before this court here.

22 MR. McCALL: No. I'm the one that filed the
23 complaint, sir.

24 THE COURT: Right.

25 MR. McCALL: I didn't receive notice.

1 THE COURT: Right.

2 MR. McCALL: I've never received notice.

3 THE COURT: Right.

4 MR. McCALL: Okay. This came about ---

5 THE COURT: But you showed up for the trial, didn't
6 you?

7 MR. McCALL: The repairman's lien I never showed up
8 for ---

9 THE COURT: Right.

10 MR. McCALL: --- because I didn't get notice. Okay?

11 THE COURT: Right.

12 MR. McCALL: All that was turned over by the Court.
13 During that time before the Court turned that over, I had
14 filed a complaint, okay, suing Mr. Barnes for selling my
15 vehicle because I knew I didn't get notice.

16 THE COURT: Right.

17 MR. McCALL: Okay? And during that time this
18 complaint was going to get heard, they heard the motion.
19 Okay. They overturned the repairman's lien, set the
20 default aside. Then I came in on the complaint ---

21 THE COURT: Right.

22 MR. McCALL: --- and I argued on that complaint it
23 had notice was Number 1. Because once I said -- the judge
24 asked me, said, If I overturn this today, what will it do
25 for you, Mr. McCall?

1 I said, It will strengthen my trial for this
2 complaint that I got filed, because the complaint is
3 totally nothing about -- but notice. And I said, All I
4 should have to do is show the jury this order, produce it
5 to them, and ask for damages.

6 THE COURT: Right.

7 MR. McCALL: Because it's been proven that they sold
8 my vehicle illegally without publishing it or even
9 notifying me. And that's what my complaint was about.
10 And he's saying that they done the right thing. In their
11 counterclaim, it says all court procedures are followed in
12 his counterclaim, which is a duplicate of the wording that
13 they used in the repairman's lien. And it wasn't
14 followed.

15 THE COURT: All right. I ---

16 MR. McCALL: He never proved it to the Court. None
17 of the exhibits show that they served me. It shows it was
18 unserved.

19 THE COURT: Right.

20 MR. McCALL: The letter came back unclaimed. And
21 that's what this whole case is about. It's about notice.

22 THE COURT: Okay.

23 MR. McCALL: The repairman's lien was and also the
24 complaint is.

25 THE COURT: All right. And you are crystal clear on

1 the record in that regard.

2 Any other thing that you would like to argue?

3 MR. McCALL: Yeah. I want to argue a few more
4 things. I sure do.

5 I want to argue the fact that when he's talking
6 about, Number 1, did the Court err letting respondent to
7 make arguments about the amended complaint pertaining to
8 financial amounts, I think the Court erred. Because at
9 the time when we started the trial, I asked the judge, I
10 said, Your Honor, before we get this trial started, on the
11 record, I want to withdraw my complaint dated 7/24/17.

12 He said, Mr. McCall, I'll allow that.

13 So I withdrew that complaint. And when Mr. Barnes
14 started talking about that complaint, I raised that issue
15 and I objected to it. I said, Your Honor, objection,
16 because I've already withdrew that complaint. He
17 shouldn't be allowed to talk about it, I said, because
18 he's prejudicing me at this time. And then he continued,
19 and the Court didn't say anything. Okay?

20 THE COURT: Yeah. You've done a good job in setting
21 that forth in your exceptions to the trial. I understand
22 what transpired and what the ruling was, and you can move
23 on to the next one. I understand that. I think that
24 might have some merit to it, but I think -- my
25 understanding, we don't need to talk about that anymore.

1 MR. McCALL: Okay. All right. And I went on down,
2 and as far as the motion to dismiss the counterclaim, like
3 I've argued to you, that there was nothing ever presented
4 that they followed what they said they followed in the
5 counterclaim. Okay.

6 THE COURT: Once again, we've already heard that.

7 MR. McCALL: All right. Now, has the Court erred
8 when it granted the motion to dismiss, when they failed to
9 grant the motion to dismiss denying the storage fees?
10 Okay. When I presented to them South Carolina Regulation
11 38-16, Numeral 14(c), I produced that to the Court, and
12 Mr. Barnes testified and wrote in his return, in his
13 answer that, yes, an unidentified man called. He didn't
14 call my name, but he asked questions about the Court --
15 the vehicle and offered to pay for the vehicle.

16 Well, under South Carolina regulations, it says that
17 once a designee or the owner calls and offers to pay, and
18 I've done this in a timely manner, like a week after my
19 wreck, okay, and -- that the storage fees cease, they end.
20 And that's South Carolina regulation that states they were
21 to end. But he kept letting them accumulate. And he
22 testified to the fact, he wrote even in his return that an
23 unidentified man called. And on the evidence of the
24 invoice, it shows where my phone number is at. He's got
25 it up there that I called. Okay? It says a man called,

1 and I testified to that, that it was me called you. And I
2 came to your shop as soon as I was released, and you let
3 me get my medicine, but you wouldn't give me my vehicle.

4 You wouldn't let me pay you. I offered to pay you. That
5 was one of the arguments, that they erred because they
6 should have granted the motion on that.

7 Okay. Did the Court err when it refused to suppress
8 to keep out the evidence, the respondent's towed vehicle
9 report? Yes. I argued that because the officer wasn't
10 there to -- me to question the authenticity of it because
11 it had been marked through, and nobody even put any kind
12 of initials on it. It had stuff that was marked out on
13 it, and I questioned the authenticity of it. And they
14 knew we was having a trial. They could have had the
15 officer there, and they didn't. And I felt like the Court
16 should have suppressed it and kept it out because there
17 were some other things we argued they kept out.

18 Did the Court err, charging only portions of the law,
19 failing to charge all of it? And being that his
20 counterclaim says that he went through all court
21 procedures, he went through over there at Mr. Simms'
22 office filing his papers and everything, yes, they should
23 have charged all the law because he's saying that he went
24 through those court procedures in his counterclaim, he
25 gave everything that the Court asked him to do when, in

1 fact, the Court only charged a portion of the law. And I
2 think the Court, they erred by that and I was prejudiced
3 in that effect because the jury didn't get to hear the
4 fact about the notice which was what my whole case hinged
5 on in my complaint.

6 THE COURT: Right.

7 MR. McCALL: Okay. Did the Court err, denying
8 appellant's right to argue and enter as evidence the
9 Court's ruling of the previous repairman's lien? And I
10 think the Court erred at that because the Court told me
11 before the end of the case, its closing, Mr. Duggan jumped
12 up and says, No. I object to him entering that. He
13 didn't want that in.

14 Judge Peden said, Mr. McCall, I'll let you in with
15 that at the closing. I'll let you talk about it at the
16 closing. But I'm not -- Mr. Duggan, I think that you --
17 we'll just wait on that. So I felt that I was prejudiced,
18 and I think the Court erred because that's what this whole
19 case consists of.

20 THE COURT: Right.

21 MR. McCALL: And my complaint was all about that.

22 THE COURT: Right.

23 MR. McCALL: Did the Court err when it told the
24 appellant that he'd get back to him about his witnesses?
25 And he says the record has nothing in it about that.

1 However, he didn't put it in there because there were
2 subpoenas for them, and he did tell me that, Mr. McCall,
3 I'll get back with you about your witnesses. It was about
4 a motion to sequester the witnesses. That's what it was
5 about. And he never heard that motion ---

6 THE COURT: Right.

7 MR. McCALL: --- and I felt like I was prejudiced on
8 it because I didn't get to have my witnesses. I never.

9 Did the Court err, allowing respondent to bring up
10 appellant's felony DUI? And I felt like the DUI part that
11 he brought up, okay, I opened the door on that, okay?
12 I'll admit. However, when he started talking about the
13 damages of the vehicle, I didn't open that door up, and
14 that's where he came in and prejudiced me because he
15 started talking about the damages when there was nothing
16 there. He proved no -- had no evidence to prove there was
17 damages. Okay? He had nothing from an adjuster. He
18 wasn't an adjuster. And the fact was, I asked him, I
19 said, You can't corroborate that with someone here, you
20 know. You don't have anybody here to testify, and you're
21 not an adjuster, you know. So I felt like I was
22 prejudiced at that point, you know.

23 Did the Court err, denying appellants a directed
24 verdict when the evidence failed to support -- and I felt
25 like this should have been a directed verdict because they

1 never presented anything that would prove that they should
2 have got awarded any money. I mean, they said that I owed
3 him for towing fees.

4 THE COURT: They did tow the car, didn't they?

5 MR. McCALL: They towed the car. Okay.

6 THE COURT: Did they store the car?

7 MR. McCALL: They said that they -- in their
8 counterclaim, they said ---

9 THE COURT: Did they store the car?

10 MR. McCALL: They stored the car. Okay.

11 THE COURT: All right. And they had to incur various
12 costs to -- in relation to the towing of the car, didn't
13 they?

14 MR. McCALL: They did, but South Carolina regulations
15 says that it ends once I go over and offer to pay it. And
16 I went to pay it. South Carolina law says if you don't
17 give notice, that you can't, you know, get anything. I
18 mean, you don't even have jurisdiction of the Court. And
19 they said they gave notice in their counterclaim.

20 THE COURT: Right.

21 MR. McCALL: My complaint argued the fact -- that.

22 THE COURT: We've addressed the notice issue, once
23 again.

24 MR. McCALL: I understand that, but I want to make
25 sure the Court knows it, because he's telling the Court

1 that it don't. And it says -- if you read that complaint,
2 it's what it says, you know. And it argues 38-600, the
3 South Carolina regulation, that the storage fees should
4 have ended because I went over there and offered to pay
5 and he says that I came. He testified to it.

6 THE COURT: Right.

7 MR. McCALL: Did the Court err, granted respondent's
8 counterclaim where the counterclaim failed to establish
9 start and ending dates? In its counterclaim, there is no
10 kind of dates in there. He just says he had the car for
11 three years. He don't say when he took the car in, how
12 long it was stored, what the storage dates were. He says
13 the Court allows him 60 days, but he also says that in his
14 answer that I came over there, and when I brought it to
15 his attention what date it was, he agreed. So it was less
16 than 60 days, therefore, he accumulated charges that
17 shouldn't have ever accrued because I went and I satisfied
18 38-600, you know, the regulation that says that they end
19 once a designee or the owner comes and offers to pay. And
20 I think the Court erred on that.

21 Did the Court err when it granted the counterclaim?
22 Like I said, where it says all court procedures were
23 followed, okay, and he says it don't say that. But if you
24 read the counterclaim, it says that we followed all court
25 procedures. Well, that was proven, like I said, in the

1 repairman's lien, they didn't, but the jury should have
2 never awarded them something that they didn't prove. They
3 never proved that to the jury. They never said here's the
4 documentation. Our court procedures were followed.
5 That's what they alleged in their counterclaim. Nothing
6 else is in that counterclaim but that.

7 At the end it says that I owe the remaining portion
8 of what they're suing me for, that they didn't get out of
9 the vehicle, which they never brought a receipt saying
10 that they got \$500 for the vehicle. He never produced
11 anything from the scrap yard that he alleged he went to.
12 I don't know what he got for it or my property that was in
13 it.

14 So that's my argument.

15 THE COURT: Okay. Very good. Thank you.

16 All right. Mr. McCall, you've done a very good job
17 in setting forth your points of appeal and your exceptions
18 to the trial. However, I'm going to ask if Mr. Hughes can
19 prepare an order stating the first issue has to do with
20 the fact that Mr. McCall filed three different reports and
21 alleged three different amounts of damages, and he
22 maintains that it was improper for the judge to allow
23 those complaints into evidence.

24 As a general rule, I don't allow complaints into
25 evidence generally. And I think that there is a wide

1 range of discretion given to trial judges about what
2 evidence is let in. And it comes up quite often where
3 plaintiffs and defendants want to put in their pleadings.

4 And one of the reasons why I don't do that is because it's
5 merely a mechanism to start the lawsuit or to answer the
6 lawsuit. It's usually filed by lawyers and not the
7 clients, and I just think it's improper to do that. And
8 as a general rule, and if I were trying this case, I would
9 have given that some consideration.

10 But this is different in that the complaint or the
11 pleadings filed by Mr. McCall was prepared by him, and it
12 doesn't have anything to do with legal theories. It's
13 just what he maintains his damages were. So under these
14 circumstances, I think it was proper for the judge to
15 allow in the evidence to impeach his allegation with
16 regard to the amount of damages that were submitted to the
17 jury.

18 The second exception has to do with the fact that the
19 exhibits were not clocked in and filed. There's no
20 procedural mechanism that requires that. As a matter of
21 fact, there is no way to do that. That's improper. You
22 can't file exhibits with the Court. It's improper to do
23 that. That particular exception has absolutely no merit.

24 The issue with regard to notice, and I know that
25 Mr. McCall disagrees with that, but the issue with regard

1 to notice, he raised that before the Court, and they set
2 aside the default, and he prevailed on that issue. He
3 did, indeed, have notice and actually showed up, defended
4 the counterclaim against him and was able to prosecute his
5 complaint.

6 As far as the storage fees, certainly, that is a
7 legitimate claim for damages on behalf of Barnes Towing.
8 It was properly limited by the amount set forth in the
9 statute, and the costs that were alleged were legitimate.

10 As far as the jury instructions, certainly, the
11 repairman's statute as it goes to the very heart of this
12 controversy and an appropriate jury charge.

13 The report with regard to the damages is legitimate,
14 and someone in the return indicates that someone from
15 Barnes Towing was able to testify with regard to their
16 damages. It was submitted to the jury along with the
17 appropriate jury charge, and the jury found in an amount
18 consistent with those damages.

19 I think it was proper for the trial judge, the
20 magistrate -- or the magistrate to not allow there to be
21 argument with regard to notice. It was cured by the fact
22 that he did receive notice and was there in a position to
23 defend this action.

24 As far as witnesses go, I'm limited as a matter of
25 law to the return that's been provided to the Court.

1 There's no mention of any witnesses in the return that
2 were not allowed. If you had an objection that you feel
3 as though was not addressed in the return, it's incumbent
4 upon the appellant to produce a record to support any
5 claims that you have, and in this instance, I'm, as a
6 matter of law, restricted to the return that was
7 presented.

8 One of the things that you could have done when you
9 filed an appeal is you could have filed a motion with the
10 magistrate to clarify the record, and you could have put
11 on the record what witnesses you intended to call and the
12 fact -- and put on the record the fact that you indeed
13 subpoenaed them. It would be -- in addition to that, it
14 would be incumbent upon you to proffer the evidence that
15 was not ---

16 MR. McCALL: That's in this return?

17 THE COURT: Pardon?

18 MR. McCALL: Did you say in this return?

19 THE COURT: Say that again?

20 MR. McCALL: You're saying that -- as far as the
21 return, right?

22 THE COURT: What I'm saying is that if you have a
23 claim that's not addressed in the return, it's incumbent
24 upon you to make a record to support that.

25 MR. McCALL: Right. But I just got this record.

1 THE COURT: What I'm saying is that's what I'm
2 limited to in -- if -- you know, you're the one that filed
3 the appeal.

4 MR. McCALL: Right.

5 THE COURT: And if -- and I've explained to you the
6 perils of proceeding forward in Circuit Court without
7 having a law degree. But one of the things that you have
8 to do in an appeal is it has to be supported by the
9 record. Magistrates Court, they do not have transcribed
10 records like we have here a court reporter that says
11 everything that transpired in the hearing. The magistrate
12 is required to summarize and to set forth what witnesses
13 said and that sort of thing. Quite often they are,
14 indeed, deficient. But if you're appealing the case, it's
15 incumbent upon you to make sure that the record does
16 reflect what you're alleging. And in this case, you have
17 not done that.

18 The fact that you said that it was improper to deny
19 the directed verdict, there was ample evidence to
20 establish the repairman lien.

21 The fact that -- the issue with regard to the
22 directed verdict has absolutely no merit. It was a
23 legitimate question of fact that was submitted to the
24 jury.

25 The counterclaim was, indeed, legitimate, and

1 certainly an individual who was called upon by the State
2 to tow a car from the highway and store it, they're
3 entitled to recover for that, and that's a completely
4 legitimate counterclaim.

5 And one of the things that you said in your argument
6 concerning damages and whether your car had been damaged
7 or -- all of those issues are legitimate questions of fact
8 and are not errors of law. And that generalized complaint
9 that you have here today has no merit. Those are issues
10 that need to be resolved by a jury.

11 I'm going to ask that Mr. Hughes prepare that order
12 and send a copy of that to you. And you're protected on
13 the record, and you're entitled to appeal my decision.

14 I wish you the best of luck.

15 (WHEREUPON, proceedings concluded at 10:25 a.m.)
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CERTIFICATE OF REPORTER

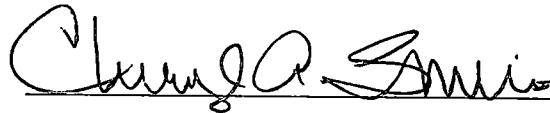
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth 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 Greenville County, South Carolina, on the 12th day of April, 2018.

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

July 5, 2018



Cheryl A. Smith, CVR-M

Court Reporter

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