

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Orangeburg County  
The Honorable Edgar W. Dickson, Circuit Court Judge  
Appellate Case No. 2012-211961

---

THE STATE,

Respondent,

vs.

HENRY HAYGOOD,

Appellant.

**RECEIVED**  
JUN 21 2013  
**SC Court of Appeals**

---

**MOTION TO FILE AN AMENDED INITIAL BRIEF OF RESPONDENT AND  
DESIGNATION OF MATTER, OR IN THE ALTERNATIVE, MOTION TO AMEND  
THE FINAL BRIEF OF RESPONDENT**

---

Respondent (“the State”), through its undersigned counsel, would respectfully show unto this Court as follows:

I.

On May 24, 2013, the State served and filed the Initial Brief of Respondent and Designation of Matter. On June 14, 2013, Appellant served and filed the Initial Reply Brief of Appellant. In that brief, Appellant alleged that the State improperly relied upon an Incident Report that was not a part of the Magistrate’s Return.

II.

In light of the allegations in the Initial Reply Brief of Appellant, undersigned counsel for the State consulted with the Orangeburg County Clerk’s Office and discovered that the Incident Report in the State’s possession was not attached to or included in the Magistrate’s Return that was filed in this case. Undersigned counsel, however, had previously relied upon that Incident

Report in the Initial Brief of Respondent and Designation of Matter under the mistaken belief that it was, in fact, a part of the Magistrate's Return. Because the document was not part of the Magistrate's Return and not part of the trial court record, it cannot properly be relied upon in the appeal of Appellant's conviction. See State v. Brown, 358 S.C. 382, 387-88, 596 S.E.2d 39, 41 (2004) (noting that an appellate court cannot consider facts not included in the magistrate's return); Rule 209 (b), SCACR (limiting what materials parties may designate in the Record on Appeal); Rule 210 (c), SCACR (noting that the Record on Appeal cannot include matter that was not presented to the lower court).

III.

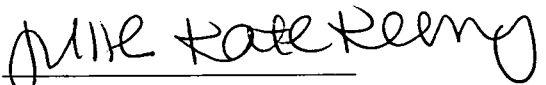
In order to comply with the rules, the State asks this Court to permit the State to file an Amended Initial Brief of Respondent and Designation of Matter so that the references to the Incident Report can be deleted. In the alternative, the State asks this Court to permit the State to amend the Final Brief of Respondent so that the references to the Incident Report can be deleted.

WHEREFORE, the State prays that the Court permit the State to file an Amended Initial Brief of Respondent and Designation of Matter, or in the alternative, permit the State to amend the Final Brief of Respondent; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

JULIE KATE KEENEY  
Assistant Attorney General

BY:   
Julie Kate Keeney  
SC Bar # 100145

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

June 21, 2013

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED  
JUN 21 2013  
SC Court of Appeals

Appeal from Orangeburg County  
The Honorable Edgar W. Dickson, Circuit Court Judge  
Appellate Case No. 2012-211961

THE STATE,

Respondent,

vs.

HENRY HAYGOOD,

Appellant.

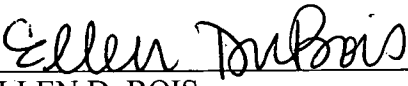
**PROOF OF SERVICE**

I, Ellen DuBois, certify that I have served the Motion to File an Amended Initial Brief of Respondent and Designation of Matter, or in the alternative, Motion to Amend the Final Brief of Respondent on Appellant by depositing a copy of same in the United States mail, postage prepaid, addressed to:

Jillian D. Ullman, Esquire  
First Circuit Public Defender's Office  
P.O. Box 1112  
Orangeburg, SC 29116

I further certify that all parties required by Rule to be served have been served.

This 21<sup>st</sup> day of June, 2013.

  
\_\_\_\_\_  
ELLEN DuBOIS  
Office of Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3727



ALAN WILSON  
ATTORNEY GENERAL

June 21, 2013

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

RECEIVED  
JUN 21 2013  
SC Court of Appeals

**RE: State v. Henry Haygood**  
Appellate Case No. 2012-211961

Dear Ms. Kitchings:

Please find enclosed the original and six (6) copies of the State's Motion to File an Amended Initial Brief of Respondent and Designation of Matter, or in the alternative, Motion to Amend the Final Brief of Respondent along with proof of service for filing in the above-referenced appeal.

Sincerely,

Julie Kate Keeney  
Assistant Attorney General  
Bar No. 100145

JKK/erd

cc: Jillian D. Ullman, Esq.  
Victim Services