

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From York County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2013-002406

The State,

Appellant,

vs.

Shelby Jean Lorusso,

Respondent.

MOTION TO STRIKE

CHRISTOPHER A. WELLBORN
S. C. Bar No. 11914

Post Office Box 10191
Rock Hill, South Carolina 29731
(803) 366-1065

ATTORNEY FOR RESPONDENT

2014 JUL 16 10:14 AM
CLERK OF COURT

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SC Court of Appeals

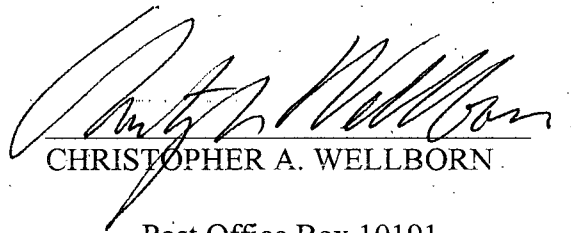
MOTION TO STRIKE

The Respondent, hereby moves to strike the State's Appeal for the following reasons:

- I. The State has stated as fact events which are not reflected by or supported by the factual record.
 - A. The State asserts that "the Respondent was stopped by Deputy Palmer on suspicion of driving under the influence." The record, both the transcript and the Return of the Magistrate are devoid of any such reference.
 - B. The State asserts that "the HGN test can be seen on the video recording." The factual record, (transcript) reflects the exact opposite.
 - C. The State asserts that "he is standing away from the patrol vehicle to avoid its lights, including flashing blue lights, from interfering with the test results." The factual record (transcript) does not support this assertion.
- II. The State has alleged the trial court erred by a finding the trial did not make. (Initial Brief of Appellant, P.7).

For the forgoing reasons, the Respondent respectfully that the State be required to resubmit its Brief, reflecting an accurate record. The Respondent further requests the time to submit the Respondent's Brief be held in abeyance pending a ruling on the above request..

Respectfully submitted,



CHRISTOPHER A. WELLBORN

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ATTORNEY FOR RESPONDENT

July 17, 2014

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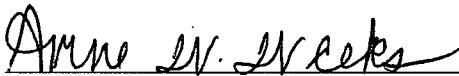
PROOF OF SERVICE

I, Anne W. Weeks, certify that I have served the within Respondent's Motion to Strike by depositing one copy each of the same in the United States mail, postage prepaid, addressed to:

Alan Wilson
Attorney General
Post Office Box 11549
Columbia, SC 29211

William M. Blich, Jr.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 14th day of July, 2014.


ANNE W. WEEKS
Legal Assistant

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SC Court of Appeals

CHRISTOPHER A. WELLBORN, P.A.

ATTORNEY AT LAW

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July 14, 2014

The Honorable Jenny Abbott Kitchings
S.C. Clerk of Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Shelby Lorusso
Appellate Case No.: 2013-002406

Dear Ms. Kitchings:

Enclosed please find for filing the original and (1) copy of the Respondent's Motion to Strike, along with Affidavit of Service, regarding the above-referenced case. By copy of this letter, I am herewith serving copies of same on attorneys of record for Appellant.

With kindest regards, I remain

Sincerely,



Christopher A. Wellborn
Attorney for Respondent
S.C. Bar No. 11914

CAW/aww

cc: Alan Wilson
Attorney General

William M. Blich, Jr.
Assistant Attorney General

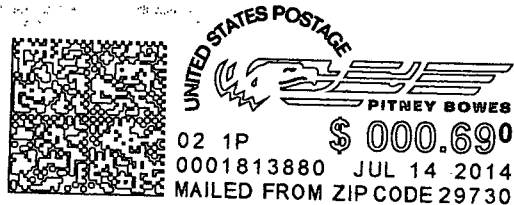
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SC Court of Appeals

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The Honorable Jenny Abbott Kitchings
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