

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2013-CP-40-1047R

173044

Evalena Catoe, individually and as Personal Representative
of the Estate of Richard L. Catoe, Jr., deceased, ... Appellant,

v.

The City of Columbia and Leon Lott, in his
official capacity as Sheriff of Richland County, ... Defendants,

Of Whom, Leon Lott, in his official capacity
as Sheriff of Richland County, is Respondent.

**MOTION TO STRIKE MATERIALS
DESIGNATED BY APPELLANT FOR INCLUSION
IN THE RECORD ON APPEAL**

The Respondent Leon Lott, in his official capacity as Sheriff of Richland
County, moves this Court pursuant to Rules 209(b) and 210(c), SCACR, for an order

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directing that the following documents be excluded from the Record on Appeal when it is prepared by the Appellant following submission of initial briefs:

- (1) All pages from the Transcript of the Deposition of J.P. Auld;
- (2) All pages from the Transcript of the Deposition of Christopher Butzer;
- (3) All pages from the Transcript of the Deposition of Kevin Cornett;
- (4) All pages from the Transcript of the Deposition of Chief Harold Dean Crisp, with the exception of pages 1, 48-50, and 71;
- (5) All pages from the Transcript of the Deposition of Stephen Dauway, with the exception of pages 1, 41-45, and 53;
- (6) All pages from the Transcript of the Deposition of Thomas Dodson, with the exception of pages 1, 38, 40-41, 54, 56-58, and 68-69;
- (7) All pages from the Transcript of the Deposition of Ruben Hurtado;
- (8) All pages from the Transcript of the Deposition of Steven Pearce;
- (9) All pages from the Transcript of the Deposition of Christopher Roberts, with the exception of pages 1, 30, 35-37, 44, and 54;
- (10) All pages from the Transcript of the Deposition of Christopher White, with the exception of pages 1, 29-30, 39-40, and 44-45;
- (11) The SLED Investigative Report as well as attachments 1-74 to that report, with the exception of the Hendrick Typed Statement which is attached to the Affidavit of Kellee E. Hendrick (filed September 5, 2013) and the Hurtado Written Statement which is attached to the Affidavit of Ruben R. Hurtado (filed October 19, 2011); and

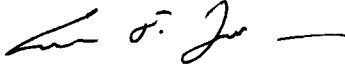
(12) Richland County Sheriff's Department Policies and Procedures

These documents, which are not included in the lower court record and were not otherwise submitted to the lower court judge, have been improperly designated by the Appellant for inclusion in the Record on Appeal.

The Respondent's motion is addressed in greater detail in the supporting memorandum filed herewith. In addition, the motion is supported by the Affidavit of Steven R. Spreeuwiers filed herewith.

The Respondent requests that all deadlines be held in abeyance until this motion is decided.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
ROBERT D. GARFIELD
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Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Respondent Leon Lott

Columbia, South Carolina

July 30, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2013-CP-40-1047R

Evalena Catoe, individually and as Personal Representative
of the Estate of Richard L. Catoe, Jr., deceased, ... Appellant,

v.

The City of Columbia and Leon Lott, in his
official capacity as Sheriff of Richland County, ... Defendants,

Of Whom, Leon Lott, in his official capacity
as Sheriff of Richland County, is Respondent.

**MEMORANDUM IN SUPPORT OF
RESPONDENT'S MOTION TO STRIKE MATERIALS
DESIGNATED BY APPELLANT FOR INCLUSION
IN THE RECORD ON APPEAL**

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This is an appeal by the Appellant challenging a lower court order granting summary judgment to the Respondent Leon Lott, in his official capacity as Sheriff of Richland County. As required by Rule 209, SCACR, the Appellant filed a

Designation of Matter to be Included in the Record on Appeal, together with her Initial Brief.

After a careful review of the lower court's file and the transcript of the motion hearing, the Respondent submits that the following depositions and other matters that have been designated by the Appellant are *not* filed in the lower court record nor were presented to Judge Eugene C. Griffith, Jr. at the motion hearing held on November 13, 2013:

- (1) Transcript of the Deposition of J.P. Auld;
- (2) Transcript of the Deposition of Christopher Butzer;
- (3) Transcript of the Deposition of Kevin Cornett;
- (4) Transcript of the Deposition of Chief Harold Dean Crisp, with the exception of pages 1, 48-50, and 71;
- (5) Transcript of the Deposition of Stephen Dauway, with the exception of pages 1, 41-45, and 53;
- (6) Transcript of the Deposition of Thomas Dodson, with the exception of pages 1, 38, 40-41, 54, 56-58, and 68-69;
- (7) Transcript of the Deposition of Ruben Hurtado;
- (8) Transcript of the Deposition of Steven Pearce;
- (9) Transcript of the Deposition of Christopher Roberts, with the exception of pages 1, 30, 35-37, 44, and 54;
- (10) Transcript of the Deposition of Christopher White, with the exception of pages 1, 29-30, 39-40, and 44-45;

(11) The SLED Investigative Report as well as attachments 1-74 to that report, with the exception of the Hendrick Typed Statement which is attached to the Affidavit of Kellee E. Hendrick (filed September 5, 2013) and the Hurtado Written Statement which is attached to the Affidavit of Ruben R. Hurtado (filed October 19, 2011); and

(12) Richland County Sheriff's Department Policies and Procedures

See, Steven R. Spreeuwers Affidavit, para. 4.¹

Rule 209(b), SCACR, provides that "the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]." Rule 210(c), SCACR, then provides that "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal."

The above identified deposition testimony and other materials, which were never presented to or considered by the lower court, should not be included in the Record on Appeal. As attested to in the Spreeuwers Affidavit, the lower court's file does not include any deposition transcripts nor even excerpts of any depositions. The Appellant's counsel did, however, submit limited excerpts from several depositions to Judge Griffith during the motion hearing held on November 13, 2013. Because those excerpts, as noted above, were presented to the lower court (although not filed), the

¹ At the request of the undersigned, Steven R. Spreeuwers, an attorney with the undersigned's law firm, personally reviewed the record in the lower court, as contained in file number 2013-CP-40-1047R, to determine what documents were contained in the lower court record. That information is included in his affidavit filed in support of this motion.

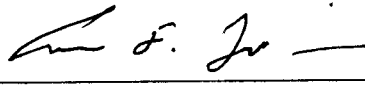
Respondent agrees that those excerpts may be properly included in the Record on Appeal. Likewise, the SLED Report and its attachments 1-74, with the exception of two witness statements as noted above, were never filed or presented to Judge Griffith at the hearing and should be excluded from the Record on Appeal. Finally, no Richland County Sheriff's Department Policies and Procedures were ever filed or presented to Judge Griffith at the hearing and should be excluded from the Record on Appeal.²

The Respondent, therefore, requests that this Court issue an order directing that the designated materials -- except for the deposition excerpts and witness statements as identified above which were submitted to the lower court -- be excluded from the Record on Appeal when it is prepared by the Appellant following submission of initial briefs.

² Note that in her Designation of Matter to be Included in the Record on Appeal, the Appellant designated "RCSD Policies and Procedures" without even attempting to identify which ones.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN

ROBERT D. GARFIELD

1611 Devonshire Drive

Post Office Box 8568

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Counsel for Respondent Leon Lott

Columbia, South Carolina

July 30, 2014

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Of Whom, Leon Lott, in his official capacity
as Sheriff of Richland County, is Respondent.

AFFIDAVIT OF STEVEN R. SPREEUWERS

PERSONALLY APPEARED BEFORE ME, STEVEN R. SPREEUWERS,
who being duly sworn, deposes and states as follows:

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1. I am an attorney with Davidson & Lindemann, P.A., which represents the Respondent in the above captioned appeal.

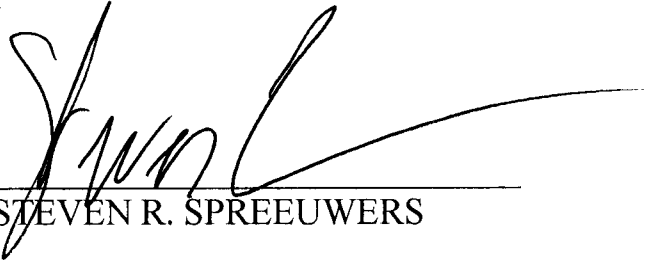
2. I was requested by Andrew F. Lindemann to review the record in the lower court, as contained in file number 2013-CP-40-1047R to determine what documents were contained in the lower court's record.

3. I traveled to the Richland County Judicial Center and personally examined all of the documents, filings and other materials contained in file number 2013-CP-40-1047R.

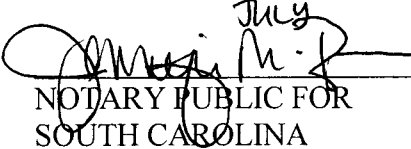
4. I specifically looked for each of the documents designated by counsel for the Appellant Evalena Catoe in her Designation of Matter to be Included in the Record on Appeal served June 2, 2014. Based on my examination of the lower court's file, I can attest to the following:

- (a) The lower court's file does not include the deposition transcripts for J.P. Auld, Christopher Butzer, Kevin Cornett, Chief Harold Dean Crisp, Stephen Dauway, Thomas Dodson, Ruben Hurtado, Steven Pearce, Christopher Roberts, or Christopher White. The lower court's file, in fact, did not include any excerpts of any of these depositions.
- (b) The lower court's file did not include the SLED Investigative Report nor attachments 1-74 to that report, with the exception of the Hendrick Typed Statement which is attached to the Affidavit of Kellee E. Hendrick (filed September 5, 2013) and the Hurtado Written Statement which is attached to the Affidavit of Ruben R. Hurtado (filed October 19, 2011).
- (c) The lower court's file does not include any Richland County Sheriff's Department Policies and Procedures.

FURTHER, AFFIANT SAYETH NOT.


STEVEN R. SPREEUWERS

SWORN TO BEFORE ME THIS 30th
DAY OF ~~SEPTEMBER~~ ^{July} 2014.

 (SEAL)
NOTARY PUBLIC FOR
SOUTH CAROLINA

COMMISSION EXPIRES: 1/13/2020

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Of Whom, Leon Lott, in his official capacity
as Sheriff of Richland County, is Respondent.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent, Leon Lott, does hereby certify that service of the below listed documents in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelope this the 31st day of July 2014:

1. **Motion to Strike Materials Designated by Appellant for Inclusion
in the Record on Appeal**

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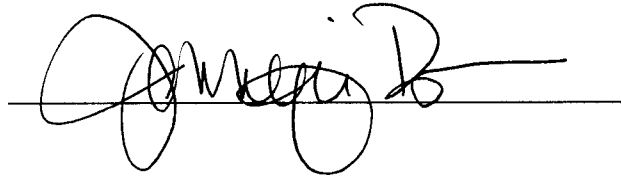
SC Court of Appeals

2. **Memorandum in Support of Respondent's Motion to Strike Materials Designated by Appellant for Inclusion in the Record on Appeal**
3. **Affidavit of Steven R. Spreeuwes**

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Mandy D. Powers-Norrell, Esquire
Norrell and Powers-Norrell, LLC
Post Office Box 994
Lancaster, South Carolina 29721

Danny C. Crowe, Esquire
Crowe LaFave, LLC
Post Office Box 1149
Columbia, South Carolina 29202

A handwritten signature in black ink, appearing to read "Steven R. Spreeuwes", is written over a horizontal line.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

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†Certified Mediator

July 31, 2014

Of Counsel
Kenneth P. Woodington

Writer's Email: alindemann@dml-law.com

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RE: Evalena Catoe, individually and as Personal Representative of the Estate of Richard L. Catoe, Jr., deceased v. The City of Columbia and Leon Lott, in his official capacity as Sheriff of Richland County
Appellate Case Number: 2014-000194
Civil Action Number: 2013-CP-40-1047R
Our File Number: 314.8165

Dear Ms. Kitchings:

Please find enclosed for filing the originals and seven copies each of the below listed documents with regard to the above referenced matter.

1. **Motion to Strike Materials Designated by Appellant for Inclusion in the Record on Appeal**
2. **Memorandum in Support of Respondent's Motion to Strike Materials Designated by Appellant for Inclusion in the Record on Appeal**
3. **Affidavit of Steven R. Spreeuwiers**

Please file the originals and return a clocked-in copy of each document to me by way of my courier. I have also enclosed my firm's \$25.00 check for the filing fee.

By copy of this letter, I am serving copies on all counsel of record.

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The Honorable Jenny Abbott Kitchings
July 31, 2014
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Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

cc: (w/ Enclosures)

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