

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Horry County  
Edward B. Cottingham, Circuit Court Judge

THE STATE,

Respondent,

vs.

RICKEY MAZIQUE,

Appellant.

**RECEIVED**

AUG 14 2014

**SC Court of Appeals**

**MOTION TO STRIKE INITIAL BRIEF  
OF APPELLANT FOR ARGUING FACTS  
OUTSIDE THE RECORD AND MOTION  
TO HOLD DUE DATES IN ABEYANCE**

Respondent now moves for this Court to strike the Initial Brief of Appellant. Specifically, in footnote three on page 26 of the Appellant's initial brief, Respondent claims, referencing the judicial website, that the victim of the armed robbery for which Appellant was convicted had pending charges. Nothing in the trial record indicates that the victim had pending charges at the time of trial or that any pending charges were brought to the trial court's attention. Respondent also now moves to hold all due dates in abeyance pending this Court's ruling on the matter.

I.

The facts asserted as referenced above are without any support in the record and clearly, Appellant is seeking to go outside the record to support his arguments. Under Rule 210(h), SCACR, facts not appearing in the record on appeal are not proper for this Court's consideration.

Under Rule 210(c), SCACR: “The record shall not, however, include matter **which was not presented to the lower court** or tribunal.” (Emphasis added).

Appellant may seek to claim that this Court should take judicial notice of the pending charges. Appellant obviously seeks inclusion of the existence of pending charges to support his claim that he should have been allowed to cross-examine the victim about the alleged pending charges. However, that is not proper in this case, because Appellant failed to bring the matter to the trial court’s attention. Appellant asked the witness if she had **ever been** arrested (not whether there were pending charges), and the trial court sua sponte admonished Appellant to move on to the next question. Appellant failed to argue or inform the trial court that the victim had pending charges. Appellant seeks to now supplement his deficiencies in preserving error and should not be allowed to do so.

II.

Respondent also moves to hold all time-lines in abeyance until this Court rules on the State’s motion.

III.

WHEREFORE, Respondent prays that this Court strike Appellant’s Initial Brief and further requests that all filing deadlines be held in abeyance pending resolution of this motion; and for such other and further relief as the Court may deem just and proper.

[SIGNATURE BLOCK APPEARS ON THE NEXT PAGE]

Respectfully submitted,

ALAN WILSON  
Attorney General

DAVID SPENCER  
Senior Assistant Attorney General

BY:   
DAVID SPENCER

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

ATTORNEYS FOR RESPONDENT

August 14, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal From Horry County  
Honorable Edward B. Cottingham, Circuit Court Judge

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THE STATE,

RESPONDENT,

vs.

RICKEY MAZIQUE,

APPELLANT.

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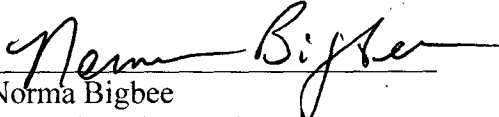
**PROOF OF SERVICE**

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I, Norma Bigbee, certify that I have served the State's Motion to Strike Initial Brief of Appellant For Arguing Facts Outside The Record And Motion To Hold Due Dates In Abeyance on his Attorney by depositing a copy of the same in the United States mail, postage prepaid, addressed to J. Falkner Wilkes, Esquire, 114 Whitsett St., Greenville, SC 29501-3139.

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

This 14<sup>th</sup> day of August, 2014.

  
Norma Bigbee  
Administrative Assistant  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

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AUG 14 2014

**SC Court of Appeals**



ALAN WILSON  
ATTORNEY GENERAL

August 14, 2014

**VIA HAND DELIVERY**

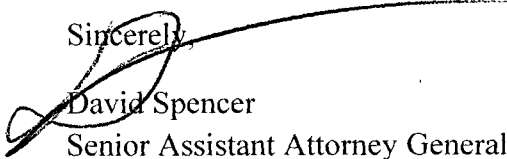
The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

RE: **State of South Carolina v. Rickey Mazique**  
**Appellate Case No: 2012-213631**

Dear Ms. Kitchings:

Enclosed please find the Original of the State's Motion to Strike Initial Brief of Appellant For Arguing Facts Outside The Record And Motion To Hold Due Dates In Abeyance in the above case.

Sincerely,

  
David Spencer  
Senior Assistant Attorney General  
Bar No: 68571

DS/nb

Enclosures

cc: J. Falkner Wilkes, Esquire  
Trisha Allen

**RECEIVED**

AUG 14 2014

**SC Court of Appeals**