THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2013-CP-08-2002

The State.....Respondent,

v.

Jami Morse.....Appellant.

MOTION TO COMPEL APPELLANT TO CONFORM
FINAL BRIEF AND RECORD ON APPEAL
TO APPELLATE COURT RULES

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COMES NOW the State of South Carolina, by and through the undersigned counsel, and does move this Court for an order compelling Appellant to conform her final brief and the Record on Appeal to the Appellate Court Rules as follows:

1. A review of Appellant's final brief reveals that material has been both added and deleted in violation of Rule 211(b), SCACR.[1] This rule provides that the final brief "shall be identical to" the brief previously served, except for references to the Record and the correction of typographical errors and misspellings, and that "[n]o other

[1] In addition, it appears Appellant has not complied with Rule 208(b)(8) and Rule 267, SCACR, regarding the form of the final brief.

changes may be made." Rule 211(b), SCACR. On page four of her final brief, Appellant includes three footnotes not contained in the initial brief. In addition, Appellant added the phrase "and/or contesting any matter" to the end of the first sentence of her conclusion on page eight of the final brief. On the other hand, on page seven of her final brief Appellant deleted the following sentence which appeared in the initial brief: "A reading of the magistrate's return confirms that these were not facts entered into the record on appeal either during the trial of this case or at any time thereafter, either by way of Motion or otherwise." Because Appellant's final brief has changed from the initial brief in ways not contemplated by the rules, she should be required to re-submit a final brief that conforms to the one initially served on Respondent.

2. The Record on Appeal served by Appellant also fails to comply with Rule 210 of the Appellate Court Rules. This rule states that the Record on Appeal "shall include all matter designated to be included by any party under Rule 209 . . . ." Rule 210(c), SCACR. Rule 210(g) also obliges the Appellant to "certify that the Record On Appeal contains all material proposed to be included by any of the parties . . . ." Rule 210(g), SCACR. On June 18, 2014, Respondent filed its Designation of Matter with no objection. However, the following items designated by Respondent as 1, 2, and 4 have not been included in the Record on Appeal:

a. Uniform Traffic Ticket # G284243
b. Court audio of August 6, 2013 hearing before Judge Edward Sessions
c. South Carolina Highway Patrol 12 Hour Rotating Work Schedule for dates August 4-10, 2013, made court's exhibit number one at the hearing of this matter before Judge Markley Dennis, Jr. on October 24, 2013

Although counsel for Appellant signed the required certificate stating that all proposed material was included, the items listed above do not appear in the Record. As these

matters were properly designated for inclusion, Respondent requests Appellant be ordered to file and serve a revised Record on Appeal containing the missing material.

3. The Record on Appeal served on Respondent is further deficient in that it does not comply with Rule 210(c), which specifies the Record "shall not . . . include matter which was not presented to the lower court or tribunal." Rule 210(c), SCACR. Subsection (g) of the rule also requires Appellant to certify that the Record contains only designated matters and "not any other material." Rule 210(g), SCACR. The copy of Judge Dennis' December 9, 2013 order which appears in the Record has been underlined throughout and is therefore not the same as when the order was issued. Similarly, the Record copy of Respondent's Notice of Appeal and Appeal to the circuit court is underlined and also annotated by a handwritten note. Since these changes to original court documents are not authorized under the rules, Respondent requests that Appellant be required to include clean copies in a revised Record to be served upon Respondent upon completion.

In Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992), our supreme court stated that "the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." Hence, it is incumbent upon counsel to provide a Record on Appeal and final brief that complies with the rules of this Court.

WHEREFORE, for the foregoing reasons Respondent prays this Court enter an order compelling Appellant's compliance with the Appellate Court Rules as to her final brief and the Record on Appeal, and asks that the time for filing of Respondent's final brief be stayed until such time as Respondent is served with a Record containing unannotated copies of all matter previously designated for the Court's consideration.

Respectfully submitted,

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Attorneys for Respondent

This 29th day of August, 2014

Blythewood, South Carolina

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v.

Jami Morse, Appellant.

PROOF OF SERVICE

I hereby certify that I have served the State's Motion to Compel Appellant to Conform Final Brief and Record on Appeal to Appellate Court Rules upon the Appellant, by serving his attorney, Milton D. Stratos, 1041 Johnnie Dodds Boulevard, Suite 14A, Mt. Pleasant, S. C. 29464, via United States Mail, postage prepaid, on this 29th day of August, 2014.

Randi Runkles
Paralegal

Dated: August 29, 2014

Office of General Counsel
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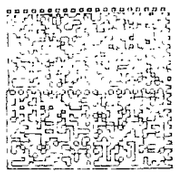

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