

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Chesterfield County  
Honorable J. Michael Baxley, Circuit Court Judge  
Appellate Case No. 2013-001415

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**RECEIVED**

JUL 21 2014

THE STATE,

Respondent, **SC Court of Appeals**

vs.

FRITZ A. TIMMONS,

Appellant.

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**RETURN TO MOTION TO STRIKE**

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

**Procedural History**

On March 18, 2013, the Honorable John A. Davis, of the Magistrate Court of Chesterfield County, held a bench trial in the case of Chesterfield County v. Fritz Timmons. Appellant Fritz Timmons attended to defend against the charges against him. Prior to the bench trial, Appellant raised two motions to dismiss. The magistrate judge denied each of the motions.

Following the bench trial, Judge Davis found Appellant guilty of Uniform Ordinance Summons 1900, 1901, and 1902 for violating S.C. Code 47-1-40, which is commonly referred to as Ill-Treatment of Animals, and Uniform Ordinance Summons 1887, 1888, 1898, 1899, 1900, 1903, 1904, and 1905 for violating 47-1-70, which is commonly referred to as Animal

Abandonment or Neglect. The magistrate judge imposed a sentence of Three Thousand Dollars (\$3,000.00) in fines with scheduled payments.

Thereafter, Appellant appealed the magistrate judge's ruling to the circuit court.

On May 8, 2013, the Honorable J. Michael Baxley held a hearing in circuit court regarding Appellant's appeal from the magistrate court. Judge Baxley ruled the appeal inartfully pled because Appellant filled out a civil appeal form, as opposed to a criminal appeal form, and Appellant did not appropriately state his exceptions to the magistrate court's judgment. Also, the court construed Appellant's arguments at the hearing to raise an issue of probable cause. However, the court determined there was sufficient probable cause based on the facts and the law presented.

The Respondent filed a motion to file its initial brief out of time with this Court. After careful consideration by the Court, the motion was granted. In the Order, dated April 18, 2014, The Honorable Paul E. Short, Jr., stated that "Should respondent designate matter to be included in the record on appeal that is not in the currently filed record on appeal, Respondent shall file a supplemental record on appeal including such matter."

#### **Appellant's Allegations**

Appellant moves this Court to strike the State's Supplemental Record for a variety of nonsensical reasons. The State submits that all of these assertions are completely without merit.

- (A) Appellant first asserts that the State's Supplemental Record should be stricken and disregarded for containing matter that already exists in the Record on Appeal he filed, as it violates the April 18, 2014 order of Judge Short. Appellant further asserts that the State's Supplemental Record should be

stricken and disregarded due to a failure by the State to serve a Designation of Matter that is also violative of Judge Short's Order dated April 18, 2014.

First, Respondent submits that the State's Supplemental Record is not violative of Judge Short's April 18<sup>th</sup> Order. Appellant misconstrues Judge Short's Order to restrict the State from including any matter in its record that was previously included in the record on appeal. Judge Short's Order simply required the State to file a supplemental record if the State wished to include matter that was not in the record on appeal. Therefore, the State's inclusion of matter that was already in the record on appeal is not violative of Judge Short's April 18<sup>th</sup> Order. For the convenience of this Court, Respondent submitted the entire magistrate's return which was filed and considered by the circuit court on appeal from magistrate's court as well as the circuit court order and the entire transcript from the circuit court appeal rather than present the matter piecemeal as was done in Appellant's Record on Appeal.

Consideration of all of the material before the circuit court is imperative to this Court's review of the proceedings. As for Appellant's assertion that the State failed to serve a Designation of Matter as required by Judge Short's Order, the State direct Appellant's attention to the document filed with its brief and served on Appellant entitled "DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL." In this Designation of Matter, the State designates all the items included in the supplemental record and presents the matter in the Supplemental Record in a manner more

beneficial to the reader. Appellant's argument, therefore completely lacks merit.

(B) Appellant next contends that pages 45-51, 63, 67, 68, 69, and 82 should be stricken and disregarded as they are not relevant to the appeal. Appellant also contends that pages 11-38, 41-62, 68-73, and 83-84 should be stricken and disregarded because they are not "referenced to by the respondent." First, Appellant's argument lacks merit, as pages 45-51, 63, 67, 68, 69, and 82 are all relevant. Pages 45-51 of the Supplemental Record are relevant, as they show the animals Appellant was convicted of neglecting, receipts from a feed store and Wal-Mart for dog food and supplies, and an exhibit originally offered into evidence by Appellant. All this material is relevant to the appeal of a conviction involving neglect of animals. Page 63 of the Supplemental Record contains the cover page for the search warrant executed by law enforcement, which is clearly relevant as it lists important details like the county, the date of the search warrant, and the officer who obtained the warrant. Page 67 of the Supplemental Record contains Appellant's notice of Appeal to the Circuit Court of Common Pleas in Chesterfield, which is relevant to the procedural history as well as relevant to the grounds on which Appellant has sought relief. Pages 68-69 contain the cover pages of a motion hearing on the appeal from magistrate's Court. This is relevant to the procedural history of the case. Page 82 contains the State's Certificate of Counsel, which is a required portion of the Supplemental Record on Appeal. Rule 210(g), SCACR, provides that "Appellant or his counsel shall certify that

the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.” It stands to reason that a certificate of counsel is also required for a supplemental record, pursuant to Rule 212, SCACR. Second, Appellant’s assertion that pages 11-38, 41-62, 68-73, and 83-84 should be stricken and disregarded because the pages are not referenced by respondent also lacks merit. There is no requirement that each page of the Supplemental Record must be cited by Respondent in its brief. All pages of the Supplemental Record are relevant to this appeal, despite the fact that the State does not cite every single page in its brief. The Supplemental Record on Appeal contains the matter considered by the circuit court on appeal as well as the order and transcript from that appeal. All are proper, pursuant to Rules 209 and 210, SCACR (stating that the Record on Appeal shall include all matter designated by any party and the only prohibition is that the matter included must have been presented to the lower court). Respondent has fully assumed responsibility for the costs associated with filing and serving the Supplemental Record on Appeal and the entirety of the circuit court proceedings and the magistrate’s return are relevant to the appeal. The State would also like to note that the last page of the Supplemental Record is page 82, which would explain its strategic move not to cite pages 83 and 84 in its brief.

(C) Appellant’s next assertion is that Respondent’s Supplemental Record should be stricken and disregarded for violating Rule 210(c), SCACR, which states that “matter included in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgment, decrees, decisions,

pleadings, transcript, charges, exhibits, and other materials or documents, and a certificate by appellant.” The State’s Supplemental Record is arranged in chronological order, for the ease of this Court’s understanding. The Order on Appeal in Common Pleas appears after the transcript of that proceeding for the sake of clarity. This practice is not uncommon.

(D) Appellant next contends that the Supplemental Record should be stricken due to a violation of Rule 212(b), SCACR. Appellant seems to assert that Appellant’s Supplemental Record was improper as there was not written consent by all attorneys of record to the filing of the Supplemental Record. The State submits that Appellant’s argument was without merit, as the State had permission from the Court to file its Supplemental Record. Rule 212(b), SCACR, provides that “With the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so.” While Respondent did not obtain written consent by Appellant to file its Supplemental Record, Respondent had express permission from this Court to do so. As noted earlier, Judge Short’s April 18<sup>th</sup> Order stated, “Should respondent designate matter to be included in the record on appeal that is not in the currently filed record on appeal, Respondent shall file a supplemental record on appeal including such matter.” Respondent designated matters not included in the Record on Appeal, therefore it was

necessary for Respondent to file a supplemental record, as was outlined by this Court.

(E) Appellant's final contention is that pages 52-62 should be stricken and disregarded, as they fail the balancing test under Rule 403, SCRE. Pages 52-62 contain images of the deplorable condition of Appellant's dogs and their living area. If Appellant felt the images were unduly prejudicial, he should have made some effort to exclude them before they became part of the trial record. The fact that certain evidence is particularly damaging to Appellant does not in any way constitute grounds for a motion to strike.

Following Appellant's list of grounds on which his motion to strike was sought, Appellant made the generalized assertion that Respondent's Initial Brief does not comply with Rule 208(b) (4), SCACR. The relief Appellant seeks for this imagined transgression is an order by this Court for the Respondent to amend its initial brief. Appellant fails to list any specific grounds for how Respondent's brief violates Rule 208(b) (4), SCACR. The State submits that this allegation is baseless, and that the Initial Brief of Respondent complies with Rule 208(b) (4), SCACR, as well as all other applicable court rules.


**WHEREFORE**, Respondent prays that this Court will deny Appellant's motion to strike Respondent's Supplemental Record and deny Appellant's motion to order the amendment of Respondent's Initial brief.

Respectfully submitted,

ALAN WILSON  
Attorney General

SALLEY W. ELLIOTT

Senior Assistant Deputy Attorney General

BY:   
SALLEY W. ELLIOTT  
S.C. Bar No: 1871

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

ATTORNEYS FOR RESPONDENT

July 21, 2014

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THE STATE,

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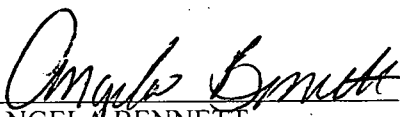
**PROOF OF SERVICE**

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I, Angela Bennett, certify that I have served the Return to Motion to Strike on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to Fritz A. Timmons, P.O. Box 367, Hartsville, South Carolina 29551.

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

This 21<sup>st</sup> day of July, 2014.

  
ANGELA BENNETT  
Administrative Assistant

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



ALAN WILSON  
ATTORNEY GENERAL

July 21, 2014

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

Re: The State v. Fritz A. Timmons  
Appellate Case N: 2013-001415

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Return to Motion to Strike along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott  
Senior Assistant Deputy Attorney General  
S.C. Bar No: 1871

SWE/ab  
Enclosures

cc: Fritz A. Timmons, pro se  
Ms. Trisha Allen

**RECEIVED**

JUL 21 2014

**SC Court of Appeals**