

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No.: 2013-CP-08-2002

The State..... Respondent,

v.

Jami Morse..... Appellant.

REPLY TO RESPONDENT'S MOTION TO CONFORM

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SEP 12 2014

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COMES NOW the Appellant, replying to the Respondent’s Motion as follows:

1. As to the alleged violation of Rule 210(g), Appellant replies that the Respondent’s alleged entering of an exhibit during the appeal hearing before the Honorable Markley Dennis is without evidentiary support. Appellant has reviewed the entire transcript of the two hearings before Judge Dennis and contends that there exists no motion by the Respondent to include additional evidence nor did Respondent obtain a ruling by the court regarding the alleged exhibit. Moreover, Appellant contends that she is unable to acquiesce to the admission of an exhibit Respondent proposes to include that was not contained in the transcript, pleadings, orders, exhibits or other materials which may be properly incorporated in the record on appeal that would otherwise constitute a direct violation of Rule 209 and 210(c).
2. Appellate Court Rule 210(c) specifically states that “The Record shall not, however,

include matter which was not presented to the lower court or tribunal.” There exist no records of the Respondent moving any exhibit into evidence and/or obtaining a ruling by the circuit court to include “exhibits or other materials” that were not part of the transcript, orders, exhibits, or other materials otherwise included in the magistrates return or otherwise preserved in the trial court. Regardless, the only reference to the “Work Schedule for dates August 4-10” that was part of the trial court’s record is designated as “Exhibit 9” in the Magistrate’s Return; said “Work Schedule for dates August 4-10” was included in the Record on Appeal. (R. pp. 67-75.)

3. In the event the Respondent is referring to some other document that was not part of the trial record, the Appellant would charge that the Respondent is being less than candid with the court. In reviewing the transcripts from the two hearings before the circuit court, Appellant finds no reference to any motion by the Respondent to include any evidence that was not part of the record otherwise set forth in the Magistrate’s Return. Moreover, Judge Dennis admonished Respondent’s counsel when she attempted to reference matters not found in the Magistrate’s Return stating to Respondent’s attorney, “it is not in the record. I’m sorry but that is not in the record that is not part of the record.” (R. pp. 36, Line 22-25, pp. 37, line 1). The entire Magistrate’s Return and the transcript from the appeal hearings before the circuit court were included in the Record on Appeal, and Appellant would not be able to certify that any other documents would be relevant as required under Rule 210(g).

4. Addressing Respondent’s complaint that Appellant’s brief included footnotes, Appellant states that the footnotes at the bottom of page four refer to the statutory provisions as set forth in paragraph’s directly above. The three footnotes complained of by Respondent are not additional matters added to the brief, but a fair citation of the statutes referred to on page four. Is Respondent really complaining about footnotes?

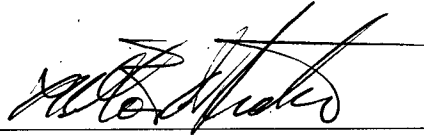
5. Respondent also indicated that the State wanted to include the audio recording and a copy of the traffic citation into the Record on Appeal, however, Respondent failed to provide Appellant with the additional audio recording and/or the uniform traffic ticket; copies not in the possession of the Appellant. Had the Respondent attempted to resolve the issues prior to filing this Motion, as required under Rule 11(a) South Carolina Rules of Civil Procedure, then Respondent would have been informed that the inclusion of such documents would not be a problem if the Respondent would provide a copy. Appellant does not believe Respondent's motion contains the Rule 11 certification and should therefore be dismissed.

6. As to the underlined passages in Judge Dennis' Order and in Respondent's Notice of Appeal, Appellant asserts that none of the documents are materially altered. The wording set forth in Judge Dennis' Order and the Notice of Appeal remain intact. Appellant admits that there are three sentences that were inadvertently underlined by Appellant after receiving Judge Dennis' Order, however, the underlined sentences referred to in the Final Brief and the minor markings do not alter or modify the ruling in any manner. The same is true of the Respondent's Notice of Appeal and Appeal; merely underlining of a few words does not materially alter the document and/or modify any content therein. Although the Appellant believes that the only purpose for Respondent's complaint is to increase the cost and inconvenience to Appellant, Appellant would agree to obtain and provide clean copies if the Court deems this to be necessary.

7. Appellant concedes that he inadvertently left out a sentence and changed a phrase in a sentence as stated in Respondent's Motion and will resubmit the Final Brief.

For the above stated reasons, Appellant prays for this Court to dismiss Respondent's Motion.

RESPECTFULLY SUBMITTED on this, the 10th day of September, 2014.



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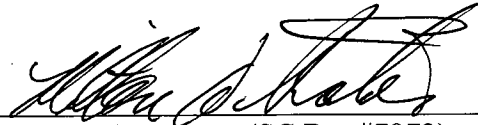
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PROOF OF SERVICE

I certify that I have served a copy of Appellant's Reply to Respondent's Motion to Conform on Respondent's counsel of record, Ms. Catherine Fant, at her office located at 10311 Wilson Boulevard, Blythewood, South Carolina 29016, on this the 10th day of September, 2014, by depositing a copy of it in the United States Mail, postage prepaid.



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SC Court of Appeals

September 10, 2014

VIA US MAIL

The South Carolina Court of Appeals
Attn: Ms. Jenny Abbot Kitchings, Clerk
Post Office Box 11629
Columbia, SC 29211

Re: The State v. Jami Morse
Case No.: 2013-002734

To Whom It May Concern,

Enclosed, please find Appellant's Reply to *Respondent's Motion to Compel Appellant to Conform Final Brief and Record on Appeal to Appellate Court Rules*. I have included the original along with seven additional copies and a prepaid, self-addressed envelope so that a filed copy may be returned to our office. Additionally, please find attached a Proof of Service certifying that the same has been served on opposing counsel via mail.

Please feel free to contact me with any questions or concerns you may have.

With kindest regards,



Malena A. Dinwoodie
Assisting
Milton D. Stratos

MDS/mad

cc: Ms. Catherine Fant, Esq.

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