

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
D. Garrison Hill, Circuit Court Judge
Appellate Case No. 2014-001853

RECEIVED
JAN 28 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

vs.

DONNA BOYD,

APPELLANT.

MOTION TO STRIKE MATTER FROM APPELLANT'S DESIGNATION OF MATTER

Respondent, by and through undersigned counsel, moving to strike portions of Appellant's Designation of Matter, would respectfully show unto this Court:

I.

Appellant was charged with filing a false police report in Greenville County. She proceeded to trial *pro se* before the Magistrate Judge Dean E. Ford, and a jury on June 25, 2014, was convicted as charged, and was sentenced. Appellant filed a notice of appeal to the Greenville County Court of Common Pleas on July 7, 2014. A hearing regarding Appellant's appeal was convened on August 12, 2014. On August 14, 2014, the Honorable D. Garrison Hill issued an order dismissing Appellant's appeal for failure to appear and prosecute. Appellant filed and served notice of appeal to this Court from Judge Hill's order of August 14, 2014, and submitted her Initial Brief of Appellant and Designation of Matter.

II.

In reviewing Appellant's Designation of Matter, it appears that several matters designated for inclusion in the Record on Appeal were not presented to the circuit court or are so vaguely described that Respondent cannot determine whether they were before the circuit court and, for that reason, must be stricken from the designation.

Specifically, Appellant designates a recording of the magistrate's court trial held on June 25, 2014 but contends in her brief that the recording of the trial by the magistrate was not available for circuit court review due to malfunction of the magistrate's equipment. (See p. 4 of Appellant's brief; No. 1 of Appellant's Designation of Matter). Therefore, the June 25, 2014 transcript must be stricken as being unavailable or as being some unofficial recording which was not presented to the circuit court for consideration.

Second, documents relating to complaints made against Judge Dean Ford and Mitchell Byrd (No. 3 & 5 of Appellant's Designation of Matter) were not presented to the circuit court judge and may not be included in the Record on Appeal. Moreover, unspecified voicemails and the specific Rule 5 discovery documents were not items presented to the circuit court. (Nos. 9 & 10 of Appellant's Designation of Matter). Lastly, Appellant designates "Attorney Correspondence." (No. 8 of Appellant's Designation of Matter). Due to the lack of specificity, Respondent is unable to determine whether unspecified documents of attorney correspondence were presented to the circuit court and, therefore, must ask that those documents be stricken unless Appellant can clearly identify the correspondence with specificity and show they were properly presented to the circuit court.

III.

Rule 209, SCACR, provides that the “Designation of Matter to be Included in the Record on Appeal . . . shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which (a party) proposes to include in the record on appeal.” Rule 209(a), SCACR. Rule 209, SCACR, also states that the “Designation must clearly identify what the party desires to have included in the Record on Appeal” and 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. Rule 209 (b), SCACR. Rule 210(c), SCACR, prohibits including portions of the transcript, pleadings, orders, exhibits, materials or matter which was not presented to the lower court. This appeal arises from the circuit court and only the documents, transcripts, material or matter presented to the circuit court judge may be included in Appellant’s designation of matter and the record on appeal. See State v. White, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007) (“Morris’ statement was not presented to the lower court and cannot properly be included in the Record on Appeal.”). South Carolina State Highway Dep’t v. Meredith, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) (“[C]ounsel is prohibited from embodying in their briefs any fact which does not appear in the record.”); Morris v. Tidewater Land & Timber, Inc., 388 S.C. 317, 333, n. 16, 696 S.E.2d 599, 608 (Ct. App. 2010) (“Under our appellate court rules, we may not consider any fact that does not appear in the record.”); see also Rule 210(h), SCACR (“[T]he appellate court will not consider any fact which does not appear in the Record on Appeal.”) The circuit court was not presented with these matters and the documents and recording may not be presented to this Court on appeal.

WHEREFORE, the State respectfully asks this Court to strike the matters listed in Appellant’s Designation of Matter as the Recording of June 25, 2014 hearing (No. 1); Complaint

against Judge Dean Ford (No. 3); Complaint against Mitchell K. Byrd (No. 5); Attorney
Correspondence (No. 8); Voicemails (No. 9) and Rule 5 Discovery (No. 10).

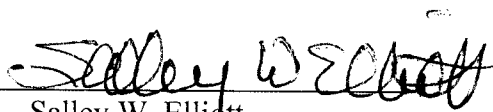
Respectfully submitted,

ALAN WILSON
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Senior Assistant Deputy Attorney General

W. WALTER WILKINS
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BY:



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ATTORNEYS FOR RESPONDENT

January 28, 2015

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THE STATE,

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Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Motion to Strike by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Donna Boyd
P. O. Box 1168
Mauldin, S.C. 29662

I further certify that all parties required by Rule to be served have been served.
This 28th day of January, 2015.



ANGELA BENNET
Administrative Assistant

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ALAN WILSON
ATTORNEY GENERAL

January 28, 2015

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

Re: The State v. Donna Boyd
Appellate Case No: 2014-00185

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the 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: Donna Boyd
Ms. Trisha Allen