

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

FEB 03 2015

Appeal from York County  
Honorable Lee S. Alford, Circuit Court Judge  
Appellate Case No. 2013-002227

SC Court of Appeals

THE STATE,

Respondent,

vs.

LYNNE SMITH SAUCIER,

Appellant.

**RETURN TO APPELLANT'S MOTION TO AMEND THE INITIAL BRIEF OF  
APPELLANT AND MOTION TO HOLD RESPONDENT'S DEADLINES IN  
ABEYANCE**

Respondent, by and through undersigned counsel, making return to Appellant's motion to file an amended initial brief and moving this Court to hold Respondent's deadlines in abeyance until thirty (30) days after this Court's ruling on Appellant's motion, would respectfully show unto this Court:

**I.**

Appellant was indicted in November 2012, for pointing and presenting a firearm. She proceeded to trial by jury on August 27, 2013. Appellant was found guilty as charged and was sentenced by the Honorable Lee S. Alford to imprisonment for a determinate term of five years suspended with probation for five years. Appellant filed a post-trial motion on September 10, 2013. The motion was denied by written order filed on October 2, 2013.

## II.

Appellant filed and served notice of appeal on October 15, 2013. Appellant filed and served the Initial Brief of Appellant on May 13, 2014. By letter dated May 23, 2014, this Court inquired about Appellant's Designation of Matter. Appellant filed her Designation of Matter on May 28, 2013, designating the trial transcript for the Record on Appeal. Appellant presented one question on appeal pertaining to the trial court's exclusion of evidence relating to a previous civil judgment.

On July 25, 2014, Respondent moved to strike portions of the Initial Brief of Appellant contending that factual assertions in the brief were not supported by the transcript Appellant designated. Respondent also moved to strike on the ground Appellant failed to provide citations or references supporting the factual statements. Respondent asked this Court to strike the unsupported factual assertions or, alternatively, to require Appellant to submit an amended initial brief containing the specific citations. Appellant submitted a Return to the Motion to Strike and also an Amended Designation of Matter four months later. This Court denied Respondent's Motion to Strike by order filed January 14, 2015, and directed Respondent to file and serve its Initial Brief of Respondent and Designation of Matter within thirty (30) days.

## III.

On January 26, 2015, Appellant moved this Court to file an Amended Brief of Appellant and attached an amended brief of Appellant which includes the original question presented in the Initial Brief of Appellant but also adds three new questions. The ground relied upon to support the motion to amend is that co-counsel was retained after Appellant's initial brief was filed and

served. Appellant argues that her request will not cause undue delay or result in prejudice to Respondent.

Respondent opposes Appellant's request to re-write the brief she submitted on May 13, 2014. Rules 208(a)(1) & 209 (a), SCACR, provide in pertinent part that Appellant shall serve and file the initial brief of appellant and the appellant's designation of matter within thirty (30) days of receiving the transcript. Appellant did so on May 13, 2014. The appellate court rules simply do not permit a party to reconsider his or her arguments and to resubmit an initial brief after having second thoughts about the issues presented and arguments raised. The appellate court rules provide for the submission of a final brief of appellant which must be identical to the initial brief except revisions to reflect references to the location of matter in the record on appeal and correction of typographical errors. See Rule 211, SCACR.

Also as to Appellant's contention the amendments will not cause undue delay or prejudice to Respondent, Respondent's disagrees. Respondent's initial brief was written and ready to be filed and served when Respondent filed its motion to strike on July 25, 2014. If Appellant is permitted to amend her initial brief, the undersigned will be required to read the transcript again in order to address the three new issues presented in Appellant's amended brief. It has been more than six (6) months since the undersigned reviewed the transcript and other documents or matter associated with this appeal and she will have to approach the appeal anew. Respondent was in the position to file its initial brief when it received this Court's order denying the motion to strike but for receiving informal notice that Appellant wished to amend her brief followed by the formal motion to amend.

IV.

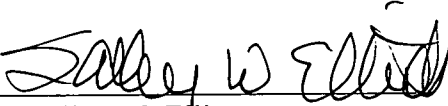
Respondent also moves this Court to hold the time for filing and serving its Initial Brief of Respondent and Designation of Matter in abeyance until thirty (30) days after this Court's ruling on Appellant's motion to amend so that Respondent will be in a position to know what it must respond to.

**THEREFORE**, the State respectfully asks this Court to deny Appellant's Motion to Amend and to hold the time for its Initial Brief of Respondent and Designation of Matter in abeyance until thirty (30) days after this Court's ruling on Appellants motion to amend her 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

February 3, 2015

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from York County  
Honorable Lee S. Alford, Circuit Court Judge  
Appellate Case No. 2013-002227

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THE STATE,

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LYNNE SMITH SAUCIER,

Appellant.

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**PROOF OF SERVICE**

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I, Angela Bennett, certify that I have served the Return to Appellant's Motion to Amend the Initial Brief and Motion to Hold in Abeyance on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to her attorney, R. Mills Ariail, Jr., Esquire, 11 North Irvine Street, Suite 11, Greenville, South Carolina 29601.

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

This 3<sup>rd</sup> day of February, 2015.

  
ANGELA BENNETT  
Administrative Assistant

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



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FEB 03 2015  
SC Court of Appeals

ALAN WILSON  
ATTORNEY GENERAL

February 3, 2015

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

Re: The State v. Lynne Smith Saucier  
Appellate Case No: 2013-002227

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Return to Appellant's Motion to Amend the Initial Brief and Motion to Hold in Abeyance 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: R. Mills Ariail, Jr., Esquire  
Ms. Trisha Allen