

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2014-000632

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FEB 12 2015

SC Court of Appeals

THE STATE,

Respondent,

vs.

KYLIE NILSON,

Appellant.

**RESPONDENT’S REPLY TO APPELLANT’S
RETURN TO MOTION TO STRIKE
APPELLANT’S DESIGNATION OF MATTER
FOR FAILURE TO COMPLY WITH
RULE 210(c), SCACR**

Respondent now makes its reply to Appellant’s return. Respondent has moved for this Court to strike a transcript of the magistrate’s court trial that was not part of the record before the circuit court judge hearing the appeal. The essence of Appellant’s return is that he was not required to submit the magistrate’s court transcript to the circuit court judge, just present the issues to the circuit court judge. The plain language of Rule 210(c), SCACR is clear that only matter before the lower court can be included on the record on appeal: “The Record shall not, however, include matter which was not presented to the lower court or tribunal.” The transcript was not before the circuit court judge. It therefore should not be before this Court.

Appellant claims Rule 210(c), SCACR only requires “the issue [be] properly presented to and ruled upon by, the lower court.” However, the rule does not discuss issues raised in a brief, but instead, what materials may properly be included on the record on appeal. Appellant does not present any authority to say it is acceptable to withhold matter from the circuit court judge on appeal from magistrate’s court and then argue the circuit court erred based on matter never before the circuit court. Such a rule runs counter to this State’s rules of error preservation. On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (“Imposing preservation requirements on the appellant is meant to enable the lower court to rule properly after it has considered all relevant **facts**, law, and arguments”) (emphasis added); State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007) (excluding post-trial “Morris” letter not presented to the circuit court).

Additionally, Respondent has not waived the issue presented in this motion. No time frame exists for a motion to strike. Further, Appellant’s ambiguous designation of matter is the cause of any delay in bringing the motion. Appellant has failed to confirm that the magistrate’s court transcript even existed when Appellant prepared the designation that Appellant purports is to include the transcript, much less when Respondent made its motion.

The Respondent’s motion should be granted.

[SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE]

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 68571

BY: 
DAVID SPENCER

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ATTORNEYS FOR RESPONDENT

February 12, 2015

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The Honorable Benjamin H. Culbertson, Circuit Court Judge **SC Court of Appeals**

THE STATE

Respondent,

v.

KYLIE NILSON,

Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Respondent's Reply To Appellant's Return To Motion To Strike Appellant's Designation Of Matter For Failure To comply With Rule 210©, SCACR**, has been served upon the applicant by mailing two (2) copies in the United States mail, postage prepaid, addressed to:

M. Gregory McCollum, Esquire
1012 38th Ave. North, Suite 202
Myrtle Beach, SC 29577

Jeffrey T. Lucas, Esquire
1012 38th Ave. North, Suite 202
Myrtle Beach, SC 29577

This 12th day of February, 2015.


NORMA BIGBEE
LEGAL ASSISTANT
FOR RESPONDENT



ALAN WILSON
ATTORNEY GENERAL

February 12, 2015

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk of the Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: **The State v. Kylie Nilson**
Appellate Case No: 2014-000632

Dear Ms. Kitchings:

Enclosed please find the original **Respondent's Reply To Appellant's Return To Motion To Strike Appellant's Designation Of Matter For Failure To comply With Rule 210©, SCACR,** along with a **Proof of Service**, in the above-referenced case, which I am today serving upon opposing counsel as shown below.

Sincerely,



David Spencer
Senior Assistant Attorney General

DS/nb

Enclosures

cc: Jeffrey T. Lucas, II, (2 copies)
M. Gregory McCollum, Esquire, (2 copies)
Trisha Allen, Victim Services (1 copy)

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