

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2014-001150

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APR 29 2015

SC Court of Appeals

THE STATE,

Respondent,

vs.

WALTER JACOB MERKA,

Appellant.

**REPLY TO APPELLANT'S RETURN TO
MOTION TO STRIKE INITIAL REPLY BRIEF
OF APPELLANT FOR ARGUING
FACTS OUTSIDE THE RECORD**

Respondent now makes its reply to Appellant's return concerning Respondent's motion for this Court to strike the Initial Reply Brief of Appellant. Appellant's reference to page 22 of the transcript, which Appellant attached to his return, does not support the facts he asserted in his Initial Reply Brief. On page 22 of the transcript, the prosecution discussed that Victim was in agreement "that ATU was a great idea for this individual because of his alcohol use." Tr. p. 22, lines 15-22. That is not the same as asserted by Merka in his reply brief as follows: "The victim told the prosecutor that she would like the Defendant to receive [an] Addiction Treatment Unit sentence which would have allowed for drug treatment and would also have correlated to approximately three (3) years of drug treatment with early release" Obviously Merka alleges

details beyond the prosecutions discussion of allowing ATU treatment with whatever sentence imposed by the judge.

Appellant does not respond to Respondent's motion as to the other extraneous matter found in Appellant's reply brief about the purported "numerous discussions" between Victim and the prosecution/Victim's Advocates (alleging Victim did not want Appellant incarcerated) found in the last paragraph on page 2 of the reply brief and carrying over to page 3. Respondent would assert that Appellant conceded by his silence the Respondent's motion on this second assertion.

Respondent disputes Appellant's assertions in the reply brief because Respondent disputes the very facts Appellant has alleged. Respondent disagrees that Victim ever communicated to the prosecution for a request for no incarceration for Appellant and believes hearsay assertions made in his reply brief to the contrary are untrue. Respondent believes that the assertions should be limited to those made before the circuit court and no more.

WHEREFORE, Respondent prays that this Court strike Appellant's Initial Reply Brief and further requests that all filing deadlines be held in abeyance pending resolution of this motion; and for such other and further relief as the Court may deem just and proper.

[SIGNATURE BLOCK FOLLOWS ON NEXT PAGE]

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

BY: 

DAVID SPENCER

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

ATTORNEYS FOR RESPONDENT

April 29, 2015

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Appeal From Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge

THE STATE,

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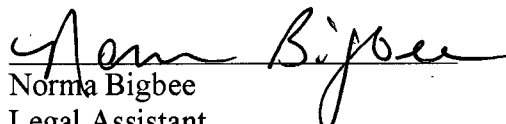
Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served Respondent's Reply To Appellant's Return To Motion To Strike Initial Reply Brief of Appellant For Arguing Facts Outside The Record on Appellant's Attorney by depositing a copy of the same in the United States mail, postage prepaid, addressed to William G. Yarborough, III, Esquire, 522 North Church St., Greenville, SC 29601.

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

This 29th day of April, 2015.


Norma Bigbee
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737



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APR 29 2015

SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

April 29, 2015

VIA HAND DELIVERY

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

Re: **The State v. Walter Jacob Merka**
Appellate Case No: 2014-001150

Dear Ms. Jennings:

Enclosed for filing is the original Respondent's Reply To Appellant's Return To Motion To Strike Initial Reply Brief of Appellant For Arguing Facts Outside The Record, along with proof of service, in the above-referenced case.

Sincerely,

David Spencer
Senior Assistant Attorney General

DS/nb
Enclosures

cc: William G. Yarborough, III, Esquire
Ms. Trisha Allen