

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY COURT OF COMMON PLEAS

Letitia H. Verdin, Circuit Court Judge

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Case No. 2014-001880

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**RECEIVED**  
JUL 27 2015  
SC Court of Appeals

State of South Carolina                      Respondent,

v.

Paul Ioan Tat                                      Appellant

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**MOTION TO OPPOSE STATE'S "MOTION TO COMPEL APPELLANT TO SERVE AND FILE AN AMENDED RECORD ON APPEAL AND HOLD THE TIME FOR FILING RESPONDENT'S FINAL BRIEF IN ABBEYANCE PENDING APPELLANT'S COMPLIANCE WITH THE REQUEST OF THIS COURT**

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**Authorities:**

1. SCACR, RULE 210 (c)
2. SCACR, RULE 211 (a)
3. SCACR, RULE 209. (b)
4. SCACR, RULE 209 (c)

## Arguments

**1. SCACR, RULE 210 (c)** “The Record shall not, however, include matter which was not presented to the lower court or tribunal.”

On May 14, 2015, the Respondent submitted the Designation of Matter To Be Included in the Record of Appeal and listed three (3) documents:

- (1) The Honorable S. Michael Gillespie Return of the Criminal Appeal, October 30, 2013;
- (2) The Honorable S. Michael Gillespie Return of the Criminal Appeal, September 24, 2013;
- (3) The Honorable S. Michael Gillespie Magistrate’s Response, September 24, 2013;

which were never filed with the Court of Clerk and Appellant was never served with.

**2. SCACR, RULE 211 (a) Time to Serve and File.** “At the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal.”

On May 14, 2015, the Respondent submitted the Designation of Matter To Be Included in the Record of Appeal ...AND...**DOES NOT LIST** the Court of Common Pleas Court, Case 2013-CP-39-01178, Hearing Record pages 1 and 16, therefore, their introduction to the Record on Appeal is illegal.

**3. SCACR. RULE 209. (b) Designation of Matter To Be Included In The Record On Appeal.**

**(b) Content.** “The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation 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 [See Rule 210(c) ]. A party shall not include any matter in his Designation which is not relevant to the appeal.”

The Respondent is referring to the First Appeal from the Magistrate Court which was Denied by the Magistrate Judge based on his interpretation of the “**Magistrate BenchBook for Criminal Procedure, Chapter H. (14)(a)**” and **Magistrate Court Rules, Rule 3. Computation of Time Periods** which states: “In computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event, or default after which the designated period begins to run is not to be included. The last day of the period so computed is to be included in the period unless it is not a working day, in which event the period runs until the end of the next day which is a working day. When the period of time prescribed or allowed is less than seven days, Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be construed as a working day”.

The Magistrate Judge erroneously calculated the Appellant’s ten (10) days grace period for filling the Motion to Reconsider and Amend Judgement and denied the Appellant's Motion for reason of “Untimely Filled”. Appellant subsequently filled an Appeal with the Court of Common Pleas and Honorable Judge G. EDWARDS WELMAKER, remanded the Appeal to the Inferior court to be reinstated.

Honorable Judge G. EDWARD WELMAKER ruled ONLY on the Magistrate Judge error for Denying the Appellant's Motion to Reconsider based on Untimely Filling the Motion and not on any other issues that may have been included in the Appeal.

The Appeal to The Court of Common Pleas is a side-loop in the case and the loop was closed by Honorable Judge G. EDWARDS WELMAKER by remanding the case back to the Magistrate Court. The issue ruled at the hearing and the court records of the hearing are irrelevant to the issues and

matters on appeal at the Appellate Court, the ruling was not disputed by either of the parties and the case was reviewed and ruled by the Magistrate Judge based on the original arguments in the appeal.

Inclusion of a part of the court records of the hearing of October 7, 2013 is in line with the Respondent general attitude to blur this Court Proceeds, divert the Honorable Judges attention from the real issues of Case 2014-001880, Court errors, and finding reasons to ask for more time and delays in the procedure.

**4. SCACR. RULE 209 (c). Certification.** “The Designation shall be accompanied by a certificate signed by the party's counsel of record that the Designation contains no matter which is irrelevant to the appeal.”

The Respondent did not comply with SCACR Rule 209(c) and did not included a signed certificate.

As to the matter of the substitution of the pages 31-40, requested by the Respondent it seems that the mentioned pages “Petition For Motion To Amend Judgement” were received by the Respondent, it consented to replace the initial send pages included in The Record and both the Clerck of Court and the Respondent have in file already the corrected and Amended Record on Appeal.

Therefore, there is no reason for this Court to hold the time for the Respondent Final Brief and the Appellant moves this Court to Oppose and Deny The Respondent request for introduction of additional pages and modification of the Record on Appeal by introduction of Designation of Matter documents that are irrelevant to the appeal (SCACR Rule 209 (c)), should have been introduced with the Respondent Initial Brief, (SCACR Rule 209 (a)) and the Appellant moves this Court to compel the Respondent to comply with Rule 211 (a) and to produce the Respondent’s Final Brief.

Respectfully Submitted,

Paul Ioan Tat



Appellant

518 Fond Du Lac Drive

Central, SC 29630

864.207.3485

July 27, 2015

THE STATE OF SOUTH CAROLINA

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State of South Carolina                      Respondent,

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PROOF OF SERVICE

I, Paul Ioan Tat, certify that I hand delivered the Appellant Motion To Oppose and Deny The State "Motion To Compel Appellant To Serve And File An Amended Record On Appeal And To Hold The Time For Filing The Respondent's Final Brief In Abeyance Pending Appellant's Compliance With The Request Of This Court" along with proof of service. I certify that all parties required by the Rule to be served have been served.

Six (6) copies to the Court Of Appeals Clerk of Court:

Jenny Abbott Kitchings , 1015 Sumter Street, Columbia, SC 29201

Two (2) copies to:

Attorney for the Respondent:

Susannah R. Cole

P.O. BOX 11549

Columbia, SC 29211

Appellant

Paul I. Tat

518 Fond Du Lac Drive

Central, SC 29630



PAUL IOAN TAT  
518 Fond Du Lac Drive  
Central, SC 29630

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JUL 27 2015  
SC Court of Appeals


Mrs. SUSANNAH R. COLE  
Rembert C. Dennis Building  
P. Box 11549  
Columbia SC 29211-1549

Re: **The State v. Paul Ioan Tat**  
**Appellate Court Case No. 2014-001880**

Dear Mrs. Cole,

Enclose please find one (2) copy of the Appellant Motion to Oppose State's "Motion to Compel Appellant To File And To Serve An Amended Record On Appeal and to Hold The Time For Filling Respondent's Final Brief In Abeyance Pending Appellant's Compliance With The Request Of This Court", along with proof of service in the above-referenced case.

Respectfully,

Paul Ioan Tat   
Appellant Case No. 2014-001880  
518 Fond Du Lac Drive  
Central, SC 29630  
864.207.3485

cc: HONORABLE : JENNY ABBOTT KITCHINGS – CLERCK OF COURT  
1015 Sumter Street, Columbia SC 29211

Original and six (6) copies.  
Proof of service