

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Greenville County
Robin B. Stillwell, Circuit Court Judge

THE STATE,

Respondent,

vs.

MARIA MOYAO,

Appellant.

Appellate Case No. 2014-002317

**MOTION TO STRIKE APPELLANT'S
DESIGNATION OF MATTER AND BRIEF
FOR FAILURE TO COMPLY WITH
RULE 210(c), SCACR**

Respondent now moves for this Court to strike Appellant's designation of matter and initial brief for presenting and arguing matters outside the record. Appellant appeals her Magistrate's Court conviction before the Honorable Charles Garrett for Driving with an Unlawful Alcohol Concentration (DUAC), which was subsequently affirmed by the Honorable Robin B. Stilwell. At trial, Appellant made an objection when the prosecution announced it was going to try Appellant for DUAC and not for Driving Under the Influence. Appellant did not state any grounds, and it appears a bench conference occurred before Magistrate Garret continued with the

trial.¹ Appellant never stated grounds on the record for the objection.

I.

Appellant has designated three items that were not presented to the Magistrate: (1) a report entitled Summary Court Pretrial Conference for the week of February 6, 2012 (item six in Appellant's designation of matter); (2) the Summary Court Jury Trial Docket for the week of March 11, 2013 (item eight); and (3) still photographs from the traffic stop video (item nine). The photograph stills from the video were not presented to the jury or admitted into evidence.

II.

Additionally, Appellant's Initial Brief references matter not presented to Magistrate Garrett: (1) the first full paragraph on page 2 of the brief references notification by the State for trial and cites the trial docket, which was not referenced or made an exhibit at trial; (2) footnote one on page 2 references a second plea offer not made part of the record; and (3) the first two sentences of the second full paragraph found on page 9 of the brief references the docket and the second plea offer, which as previously noted, was not matter presented to the Magistrate.

III.

These designated items and the references in the brief all are matter not presented to the magistrate and not proper for inclusion in the record. Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal"); Rule 208 (b)(4), SCACR ("The brief shall contain references to the transcript, pleadings, orders exhibits, or other materials which may be properly included in the Record on Appeal.").

Quite simply, Moyao is impermissibly attempting to put facts before this Court that were

¹ Note that an objection made during an off-the-record conference and not made part of the record does not preserve the question for review. State v. Hamilton, 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001). Moyao's designation apparently attempts to compensate for this deficiency.

not made available to the Magistrate. I'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)); Since the initial brief and the designation of matter are not in compliance with the Appellate Court Rules, the initial brief and designation of matter should be struck, and Appellant should be required to amend both accordingly.

IV.

Respondent also moves to hold all time-lines in abeyance until this Court rules on the State's motion.

V.

WHEREFORE, Respondent prays that this Court strike Appellant's Initial Brief and Designation of Matter, and require Appellant to submit a new Designation of Matter in compliance with Rules 209 and 210, SCACR, and amend the Initial Brief of Appellant accordingly. Respondent further requests 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 APPEARS ON FOLLOWING PAGE]

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 20, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable Robin B. Stillwell, Circuit Court Judge

THE STATE,

RESPONDENT,

vs.

MARIA MOYAO

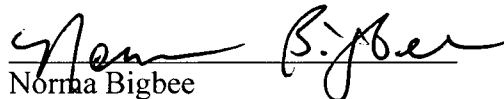
APPELLANT.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the Motion To Strike Appellant's Designation of Matter And Brief For Failure To Comply With Rule 210(c), SCACR on Appellant's Attorney by depositing a copy of the same in the United States mail, postage prepaid, addressed to .

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

This 20th day of October, 2015.



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