

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

The Honorable Robin B. Stilwell

Appellate Case No. 2014-002317

The State,

Respondent,

v.

Maria Moyao,

Appellant.

REPLY TO RESPONDENT'S MOTION TO STRIKE
APPELLANT'S DESIGNATION OF MATTER

Daniel J. Farnsworth, Jr.
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**REPLY TO RESPONDENT'S
MOTION TO STRIKE APPELLANT'S
DESIGNATION OF MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL AND INITIAL BRIEF**

STATEMENT OF ISSUE

Respondent has moved to Strike Appellant's Designation of Matter and Initial Brief for presenting and arguing matters outside the record. Appellant would submit that the items included in Appellant's Designation of Matter were available to the Magistrate during the trial of this case, and made referenced to by the Magistrate during his rulings on the issues that are the grounds for this appeal.

ARGUMENT

Respondent argues that Appellant has improperly included three specific documents in her Designation of Matter, being 1) Pretrial Conference Docket, 2) Jury Trial Docket, and 3) still photographs from the field video.

Pretrial Conference Docket – Item Six

The Pretrial Conference Docket, along with the Trial Docket, were the Magistrate Court's own documents, created by his staff, and made a principal part of the Court's file, then distributed to counsel for the parties to identify those cases to be heard during the trial term. The significance of both dockets is that they both clearly identify the charge to be tried as Driving Under the Influence, and not DUAC as proceeded with by the State.

Trial Docket – Item Eight

The trial transcript includes Magistrate Garrett announcing the case as a Driving Under the Influence charge on two separate occasions during pre-trial matters at the

beginning of trial. Appellant included this document, as it is referenced by the Magistrate when announcing the case to the jury, and to confirm that the announcements by the Magistrate were not misstatements, but accurate publications of the charge as included on the Court's own docket. Neither the Trial Docket, nor the Pretrial Docket, were documents that were not made available to the Magistrate.

Still Photographs from Field Video – Item Nine

Still photographs from the field video, identified as item nine in Appellant's Designation of Matter, were included as exact representations of what was presented to the Magistrate during his review of the field video. The trial transcript references a review of the video by the Magistrate, upon Appellant's pretrial objection to admission of the video as evidence in the case. These images were reviewed and considered by the Magistrate in making one of the rulings that Appellant now appeals.

Reference to Second Plea Offer

Respondent also identifies references made by Appellant to a Second Plea Offer in this case, and asserts that this item was not presented to the Magistrate. This document was identical to the initial Notice to Defendant, which was referenced by the Magistrate in his Return to Appellant's Notice of Appeal. However, Appellant would agree that there does not seem to be any clear reference to this Second Plea Offer by the Magistrate throughout the trial transcript or the Magistrate's Return. Therefore, Appellant would agree to amend her Initial Brief to remove those two references to the Second Plea Offer, which Respondent cites in its motion.

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Appeal from Greenville County
Honorable Robin B. Stilwell, Circuit Court Judge
Appellate Case No. 2014-002317

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SC Court of Appeals

MARIA MOYAO,

APPELLANT,

vs.

THE STATE,

RESPONDENT.

PROOF OF SERVICE

I, Brad Tollison, certify that I served the Reply to Respondent's Motion to Strike Appellant's Designation of Matter and Brief for Failure to Comply with Rule 210(c), SCACR on the South Carolina Court of Appeals, Alan McCrory Wilson, Esquire, and David A. Spencer, Esquire by depositing a copy of it in the United States Mail, postage prepaid on November 5, 2015 addressed to:

V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Alan McCrory Wilson, Esquire
Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

David A. Spencer, Esquire
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November 5, 2015

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South Carolina Court of Appeals
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**Re: Reply to Respondent's Motion to Strike Appellant's Designation of Matter
and Brief for Failure to Comply with Rule 210(c), SCACR
The State of South Carolina v. Maria Moyao
Appellate Case Number: 2014-002317**

Dear Deputy Clerk V. Claire Allen,

Please find enclosed our original and one (1) copy of our Reply to Respondent's Motion to Strike Appellant's Designation of Matter and Brief for Failure to Comply with Rule 210(c), SCACR, as well as Proof of Service regarding the above referenced case.

Please stamp and clock the copy and return it in the provided self-addressed stamped envelope.

Thank you for your assistance.

With kind regards, I am

Your very truly,



Brad Tollison
Paralegal to Daniel J. Farnsworth, Jr.

Enclosures

FARNSWORTH LAW OFFICES, LLC

ATTORNEYS AND COUNSELORS AT LAW

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GREENVILLE, SOUTH CAROLINA 29604



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