

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

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NOV 10 2015
SC Court of Appeals

THE STATE,

Respondent,

vs.

MARIA MOYAO,

Appellant.

Appellate Case No. 2014-002317

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

Respondent now makes its return to Appellant's return to the Respondents motion to strike matters outside the record.

I.

Appellant 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.

Appellant claims the first two items, docket reports, “were available” to the magistrate but does not indicate that the items were actually provided to the magistrate. There is no evidence in the record that those items were presented to the magistrate; therefore, they are not proper for inclusion in the record.

Appellant argues the last item, still photographs from a video that was admitted into evidence is allowable because the magistrate reviewed the video and the stills are “exact representations” of what was presented to the magistrate. Respondent maintains its objection because no evidence indicates that the stills themselves were presented to the magistrate. The video itself is the exact representation of what was presented to the magistrate; the magistrate never saw the stills, so the matter is not proper in the designation. The video itself will be available for this Court’s review.

III.

These designated items 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.”).

IV.

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.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 68571

BY: 

DAVID SPENCER

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

ATTORNEYS FOR RESPONDENT

November 10, 2015

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Respondent's Reply to Appellant's Return to Motion to Strike Appellant's Designation of Matter and Brief for Failure to Comply with Rule 210(c), SCACR on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to her attorney, Daniel J. Farnsworth, Jr., Esquire, P.O. Box 8719, Greenville, South Carolina 29604.

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

This 10th day of November, 2015.



ANGELA BENNETT
Administrative Assistant

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



ALAN WILSON
ATTORNEY GENERAL

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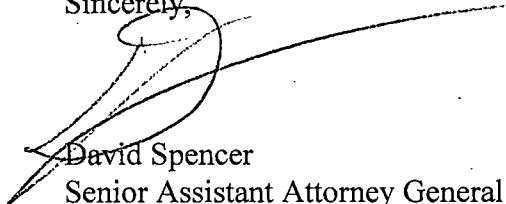
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. Maria Moyao
Appellate Case No: 2014-002317

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Respondent's Reply to Appellant's Return to Motion to Strike Appellant's Designation of Matter and Brief for Failure to Comply with Rule 210(c), SCACR along with proof of service in the above-referenced case.

Sincerely,



David Spencer
Senior Assistant Attorney General
S.C. Bar No: 68571

DS/ab
Enclosures

cc: Daniel J. Farnsworth, Jr., Esquire
Ms. Trisha Allen