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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No, 2014-001848

The State

Respondent

vs.

Benny L. Webb

Appellant

Motion to Amend Designation of Matter

Benny L. Webb

710 Windrow Drive

Sumter, South Carolina 29150

(803) 972-3613

Appellant, Pro Se

IN THE SOUTH CAROLINA COURT OF APPEALS

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COLUMBIA, SOUTH CAROLINA

DEC 01 2015

SC Court of Appeals

THE STATE)

RESPONDENT,)

V.)

Appellant Case No. 2014-001848

BENNY L. WEBB,)

APPELLANT.)

)

Memorandum in Support of Amended Designation of Matter

INTRODUCTION

Pursuant to South Carolina Appellant Rules 240, the appellant hereby submit this motion for leave to file an Amended Designation of Matter of Record on Appeal because the State (Herein referred to as the "Respondent") did not file in a timely manner its Initial Brief to the Court. And once the Respondent filed its response, it contained grossly false and specious information that if upheld by this Honorable Court would be a detriment to the Appellant's and the tenants of fundamental fairness.

Table of Authorities

South Carolina Appellant Rules of Procedures, 240, which governs modifications to motions, orders, rulings, and opinions are applicable.

Henning v. Kaye, 307 S.C. (1992), at 415 S.E. 2d 794

Moore v. Baker, 989 F. 2d 1129, 1131 (11th Cir. 1993)

Edwards v. The City of Goldsboro, 178 F. 3d 231 (4th Cir.1999)

FTC v. Phoebe Putney Health Systems, Inc., S. Ct. 28 (2011)

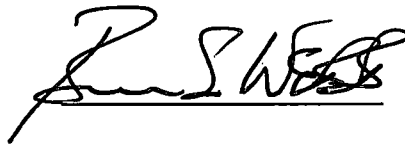
In the present case, the record will show that the initial response of the Respondent was not file in a timely matter, but leave was granted to allow Respondent time to file initial response.

In the response, the Respondent stated that the edited tape was merely a cumulative of other testimony that was presented in the case. To the contrary, the testimony of Shelia Singletary and Officer John Jackson directly contradicts the testimony of Paul Curry. In fact, if the evidence in the testimony is taken in totality, the cumulative evidence would favor the Appellant in this case.

The Respondent was well aware that it was misleading the Court regarding this issue and grossly misstated the fact in this case all geared to a Will-to-Win. The Appellant is asking the Court to grant leave to amend the designation of matter. The Appellant is also requesting that the Court sanction the Respondent for its blatant disregard of the truth in this very important matter to the Appellant and for the Court to insure that the matters submitted to this Court meet the legal standards set by the Courts of South Carolina.

CONCLUSION

For the reasons identified above, the Appellant requests that the Court grant the Appellant's motion to Amend the Designation of Matter.



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November 24, 2015

Sumter, South Carolina

CC: V. Henry Gunter, Jr.

Jenny A. Kitchings

IN THE SOUTH CAROLINA COURT OF APPEALS
COLUMBIA, SOUTH CAROLINA

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SC Court of Appeals

THE STATE)

RESPONDENT,)

v.)

Appellant Case No. 2014-001848

BENNY L. WEBB,)

APPELLANT.)

)

APPELLANT'S MOTION TO AMEND DESIGNATION OF MATTER

INTRODUCTION

Pursuant to South Carolina Appellant Rules 240, the appellant hereby submit this motion for leave to file an Amended Designation of Matter because the State (Herein referred to as the "Respondent") did not file in a timely manner its Initial Brief to the Court. And once the Respondent filed its response, it contained grossly false and specious information that if upheld by this Honorable Court would be a detriment to the Appellant's and the tenants of fundamental fairness.

None of the factors that may militate against granting a motion to amend is present in this case. Appellant moved swiftly to file this motion in a timely manner. Thus, there is no undue delay in Appellant's request to amend. Appellant is not seeking the amendment in bad faith or with a dilatory motive.

The interest of justice and the judicial economy will undoubtedly be served by having all allegations properly before this Court as set forth in the Appellant's proposed amended designation of matter. The amendment is narrowly tailored to reflect the present circumstances and Appellant's present understanding of the case. In doing so, the action can more effectively precede on the merits.

Respondent will not suffer any undue prejudice by virtue of the Court's allowance of the proposed amendment. The determination of whether prejudice would occur often includes assessing allowing

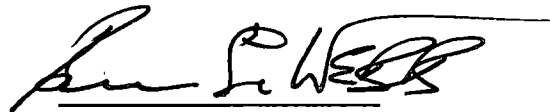
amendment would result in additional cost, and preparation to defend against new facts or theories. Respondent cannot be prejudiced, or caught off guard, by the new facts alleged by the Appellant in the proposed amendment, since the Respondent has first-hand knowledge of the role that they played in the controversy at issue and the appellate proceedings described therein. The proposed amended record on appeal does not involve the addition of any new respondents. No prejudice would result to Respondent in allowing the amendment under these circumstances.

Finally, Appellant request to file amendment is not futile as Appellant has alleged sufficient facts to state a claim for relief that is facially plausible. Where the proposed amendment is clearly not futile, denying the amendment on this ground is highly improper.

Accordingly, in the interest of justice, this Court should grant Appellant's motion to amend record on appeal. The grant of this motion is particularly appropriate here, given the clear derelict of the respondent and the absence of any substantial reason to deny the motion to amend.

CONCLUSION

For the reasons identified above, the Appellant requests that the Court grant the Appellant's motion to amend Designation of Matter..



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November 24, 2015

Sumter, South Carolina

CC: V. Henry Gunter, Jr.

Jenny A. Kitchings

CERTIFICATE OF SERVICE OF MOTION TO AMEND DESIGNATION OF MATTER

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM Horry COUNTY

Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No, 2013-CP-26-00432

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SC Court of Appeals

The State

Respondent

vs.

Benny L. Webb

Appellant

CERTIFICATE OF SERVICE OF MOTION TO AMEND DESIGNATION OF MATTER

I Certify that I have served the amended final brief of appellant and amended designation of matter on V. Henry Gunter by depositing one copy of the same in the United States mail, postage prepaid, addressed to Office of South Carolina Attorney General, P.O. Box 11549, Columbia, South Carolina 29211.

I further certify that all parties required by Rule have been served. This 1st day of December, 2015.

Benny L. Webb

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