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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JAN 25 2016

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

SC Court of Appeals

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2014-002532
Case No. 2013-CP-36-00321

Anthony Derone Richardson,

Appellant,

v.

Jackie Swindler, Chief of Police,
Newberry County Municipal Police,

Respondent.

RESPONDENT'S MOTION TO CORRECT THE RECORD ON APPEAL

The Respondent Jackie Swindler respectfully moves this Court, pursuant to Rule 240(a), SCACR, for an Order requiring the Appellant to file and serve a corrected Record on Appeal that complies with the South Carolina Appellate Court Rules. Specifically, the Respondent respectfully requests that the Appellant correct the Record on Appeal to include in the Record on Appeal all documents designated by the parties and to fully comply with the South Carolina Appellate Court Rules by consecutively numbering each page beginning with the index and by arranging the Record on Appeal in the order set forth in Rule 210(c), SCACR.

The Respondent's motion is addressed in greater detail in the supporting memorandum filed herewith. The Respondent requests that the Court hold all deadlines in abeyance until the issue regarding the Record on Appeal is resolved.

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ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina

January 22, 2016

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**RESPONDENT'S MEMORANDUM IN SUPPORT OF MOTION TO CORRECT THE
RECORD ON APPEAL**

The Respondent Jackie Swindler, through his undersigned attorneys, filed a motion pursuant to Rule 240(a), SCACR, to require the Appellant to correct the Record on Appeal on the grounds that it fails to comport with the requirements set forth in Rule 210, SCACR, and therefore, the Respondent cannot appropriately reference the Record on Appeal in his Final Brief in accordance with Rule 211(b)(1), SCACR.

The current form of the Record on Appeal renders it impossible for the Respondent to properly cite to the Record in his Final Brief. The relevant portion of Rule 210(c), SCACR, provides:

The record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index.

Rule 210(c), SCACR. In his Designation of Matter to be Included in the Record on Appeal, the Respondent designated, among other documents, the following documents to be included in the Record on Appeal: (1) the Order of the Trial Court, dated November 5, 2014; (2) the Defendant's **Amended** Motion for Summary Judgment; (3) the Defendant's **Amended** Memorandum in Support of Motion for Summary Judgment with Exhibits one through seven; (4) the Defendant's Motion for Summary Judgment; and (5) the Answer filed on behalf of Defendant. (*See* Respondent's Designation of Matter to be Included in the Record)(emphases added). While the Appellant attempted to include in the Record on Appeal exhibits one through seven of the Defendant's Amended Memorandum in Support of Motion for Summary Judgment, he did not include the Defendant's Amended Memorandum in Support of Motion for Summary Judgment itself. Furthermore, some of the exhibits the Appellant included are incorrect or incomplete. For example, he did not include the correct documents that correspond to exhibits 1, 4 and 5, and he did not attach any document to exhibit 7. The remaining documents listed above that were set forth in the Respondent's Designation of Matter were not included in the Record on Appeal. Accordingly, the Record is incomplete.

Furthermore, the Appellant did not arrange the Record on Appeal in the manner set forth in Rule 210(c), SCACR. Instead, the Record was poorly organized. The arrangement of the Record after the index is as follows: (1) an order, but not the order from which this Appeal arose, which the respondent designated to be included in the Record and is not; (2) the Defendant's Memorandum in Support of Motion for Summary Judgment, but not the Defendant's Amended Memorandum in Support of Motion for Summary Judgment, which the respondent designated for inclusion and which was before the trial court at the hearing that resulted in the order from which this Appeal arose; (3) the Appellant's deposition transcript; (4) the transcript of the hearing; (5) an assortment of documents; and (6) the exhibits purportedly attached to the Defendant's Amended Memorandum in Support of Motion for Summary Judgment, which are incorrect and incomplete. In addition, pages are out of order within the designated matters themselves, and pages from one or more designated matters have been mixed in with other designated matters.

Lastly, the Appellant failed to consecutively number the Record on Appeal beginning with the index. The index does not provide a corresponding consecutive page number for each designated matter, but instead appears to indicate that each designated matter can be found on page one or page two. Given its current format, the Respondent cannot appropriately reference the Record in his Final Brief. Rule 211(b)(1), SCACR provides: "[t]he references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. These revised references may be in place of or in addition to the initial references, and shall be in the form indicated by the following examples: (R. p. 15) (R. p. 75 lines 8-20) (R. p. 90, line 1 – p. 101, line 14) (R. pp. 29-31)." (*See* Rule 211(b)(1)). However, since the Record on Appeal has no consecutive page numbers, it is impossible for the Respondent to properly reference the

Record in adherence to the foregoing rule. Accordingly, the Respondent respectfully requests that the Appellant be required to correct the Record on Appeal.

Respectfully submitted by,

MORRISON LAW FIRM, LLC

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ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina

January 22, 2016

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CERTIFICATE OF SERVICE

The undersigned employee of Morrison Law Firm, LLC, attorney for the Respondent does hereby certify that service of the **Respondent's Motion to Correct the Record on Appeal and Memorandum in Support of Motion** in the above-captioned action was made upon the Appellate by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 22nd day of January, 2016, addressed as follows:

Anthony D. Richardson
Post Office Box 221
Newberry, South Carolina 29108



Callie M. Morrison

Columbia, South Carolina

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SC Court of Appeals

David L. Morrison*
Kassi B. Sandifer
Robert G. Cooper**
J. Jordon Johnson

*Licensed in SC & NC

*Certified Mediator

**Of Counsel

January 22, 2016

Honorable Jenny Abbott Kitchings
Clerk of Court, Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Anthony Derone Richardson v. Jackie Swindler, Chief of Police, Newberry County
Municipal Police
Appellate Case #: 2014-002532
C/A #: 13-CP-36-00321
Our file: 210.0411

Dear Clerk Kitchings:

Enclosed is the original and one copy of the Respondent's Motion to Correct the Record on Appeal and Memorandum in Support of Motion in this matter. Also enclosed is our check #4270 in the amount of \$25 for the cost of filing. Please return a clocked-in copy to me in the self-addressed stamped envelope enclosed for your convenience. By copy of this letter, I am serving the Appellant with a copy of same.

Very truly yours,

MORRISON LAW FIRM, LLC

Kassi B. Sandifer

Kassi B. Sandifer

KBS/cmm

Enclosure

cc: Anthony D. Richardson



MORRISON LAW FIRM, LLC
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Honorable Jenny Abbott Kitchings
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