

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAY 24 2016

SC Court of Appeals

APPEAL FROM OCONEE COUNTY
R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2015-002009

THE STATE,

Respondent,

v.

WAYNE BEECHER CARTER,

Appellant.

MOTION TO STRIKE

Appellant (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

On September 3, 2014, officers with the Seneca Police Department seized methamphetamine, a scale, baggies, a spoon, and a large quantity of cash from Appellant Wayne Beecher Carter’s vehicle following a traffic stop in Seneca, South Carolina. In March of 2015, the Oconee County Grand Jury indicted Appellant for possession with intent to distribute methamphetamine. On September 14, 2015, Appellant proceeded to a jury trial before the Honorable R. Scott Sprouse. On September 15, 2015, the jury convicted Appellant as indicted. Judge Sprouse sentenced Appellant to eight years imprisonment. Thereafter, Appellant filed a timely notice of appeal.

II.

Appellant filed and served his Initial Brief of Appellant and Designation of Matter on February 24, 2016. In his Designation of the Matter, Appellant designated the “incident report” to be included in the Record on Appeal.

III.

Rule 210(c), SCACR, provides that the Record on Appeal “shall include all matter designated to be included by any party under Rule 209. . .” Critically, the rule further provides that the Record on Appeal “shall not, however, include matter **which was not presented to the lower court or tribunal.**” *Id.* (emphasis added).

IV.

Appellant designated the “incident report” for inclusion in the Record on Appeal. However, the incident report from Appellant’s arrest was **not** presented to the trial court and was not considered by or relied upon by the trial judge in deciding the merits of Appellant’s motion to suppress. Therefore, pursuant to Rule 210(c), SCACR, it cannot be included as a part of the appellate record. See State v. White, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007) (“Morris’ statement was not presented to the lower court and cannot properly be included in the Record on Appeal.”).

V.

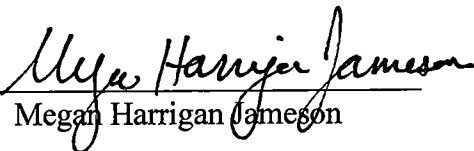
Based on the foregoing, the State respectfully asks this Court to strike the “incident report” from Appellant’s Designation of Matter and require Appellant to file the Record on Appeal without including the improperly-designated matter. Furthermore, the State requests this Court to hold the time period for the filing and service of the Record on Appeal in abeyance until this motion has been ruled upon.

WHEREFORE, the State prays that this Court will strike the improper matter designated by Jolly in his Designation of Matter; strike Jolly's brief referencing the improperly-designated matter and require the service and filing of an Amended Initial Brief of Respondent omitting any reference to the improper matter; allow the State to file the Record on Appeal without including the improperly-designated matter; hold the time period for service and filing of the Record on Appeal in abeyance pending a ruling on this motion; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General
S.C. Bar No. 100108

By: 
Megan Harrigan Jameson

Office of the Attorney General
Post Office Box 11549
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May 24, 2016

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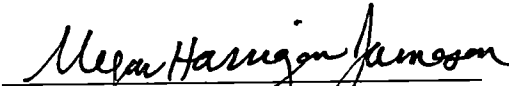
Appellant.

PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Motion to Strike on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 24th day of May, 2016.


MEGAN HARRIGAN JAMESON
Assistant Attorney General

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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

May 24, 2016

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: State v. Wayne Beecher Carter, Appellate Case No. 2015-002009

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Motion to Strike, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Megan Harrigan Jameson
Assistant Attorney General

MHJ/
Enclosures

cc: Robert M. Pachak, Esquire
Victim Services