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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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

RECEIVED

MAY 19 2016

SC Court of Appeals

Anthony Derone Richardson,

Appellant,

v.

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

Respondent.

RESPONDENT'S THIRD 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 all documents designated by the parties as 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

May 19, 2016

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**RESPONDENT'S MEMORANDUM IN SUPPORT OF THIRD 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 Appellant served his corrected Record on Appeal on April 30, 2016. While the Appellant corrected the pagination issue, the current Record on Appeal is incomplete, and

therefore, it is 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 (emphasis added). In his Designation of Matter to be Included in the Record, the Respondent included, among other documents, the following: (1) Order of the Trial Court dated November 5, 2014; (2) the Transcript of Deposition of Anthony Richardson taken on March 24, 2014; (3) the Defendant's Amended Motion for Summary Judgment; (4) the Defendant's Amended Memorandum In Support of Motion for Summary Judgment with Exhibits 1 through 7; (5) the Defendant's Motion for Summary Judgment; and (6) the Answer filed on behalf of the Defendant. (See Respondent's Designation of Matter to be Included in the Record).

The Appellant did not include the foregoing documents in the Record on Appeal he recently served on April 30, 2016.¹ Rule 210(h) clearly states that: “[e]xcept as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.” Rule 210(h), SCACR. The foregoing documents are central to the issues on appeal and contain facts that require consideration by the Court in this matter.

¹ It appears that the Appellant attempted to include exhibits one through seven of the Defendant's Amended Memorandum in Support of Motion for Summary Judgment, but he did not include the Amended Memorandum in Support of Motion for Summary Judgment.

Furthermore, it appears that the Appellant has made his final brief part of the Record on Appeal, which is not proper. Rule 210(c) sets forth the categories of documents that can be included in the Record on Appeal, and final briefs are not listed as appropriate content. Rule 210(c), SCACR. Moreover, the Appellate Court Rules provide that final briefs are to be served within twenty days after the service of the Record on Appeal. Rule 211(a), SCACR. Accordingly, the Appellant should be required to correct the Record on Appeal to include the documents set forth in the Respondent's Designation of Matter that were excluded from the Record on Appeal and to remove from the Record on Appeal what appears to be the Appellant's final brief.

Respectfully submitted by,

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ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina

May 19, 2016

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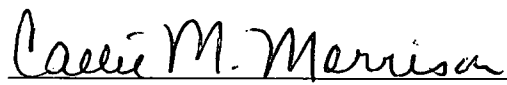
Jackie Swindler, Chief of Police,
Newberry County Municipal Police,

Respondent.

CERTIFICATE OF SERVICE

The undersigned employee of Morrison Law Firm, LLC, attorney for the Respondent does hereby certify that service of the **Respondent's Third 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 19th day of May, 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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David L. Morrison*
Kassi B. Sandifer
Robert G. Cooper**
J. Jordon Johnson

*Licensed in SC & NC
*Certified Mediator
**Of Counsel

May 19, 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 are the original and one copy of the Respondent's Third Motion to Correct the Record on Appeal and Memorandum in Support of Motion in this matter. Also enclosed is a check 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

Enclosure

cc: Anthony D. Richardson

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