

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County
The Honorable Kristi L. Harrington, Circuit Court Judge

Appellate Case No: 2014-002776

RECEIVED
JAN 31 2017
SC Court of Appeals

THE STATE,

Respondent,

vs.

LOUSHONDA MYERS,

Appellant.

**MOTION TO COMPEL AND RETURN TO MOTION TO CORRECT/AMEND
RECORD**

On November 10, 2016, Appellant filed a Record on Appeal that omitted several critical items from Respondent's Designation of Matter. Respondent subsequently filed a Motion to Compel filing of Complete Record on Appeal on November 22, 2016. This Court subsequently granted Respondent's motion on January 12, 2017 and ordered Appellant to include the omitted matters designated by Respondent. On January 31, 2017, the State received Appellant's "Supplement to Record on Appeal" and "Motion to Correct/Amend Record."

In Appellant's "Supplement to Record on Appeal," Appellant again neglected to include matter designated by Respondent. While Appellant did include some of the matter designated by Respondent that was not included in the original Record on Appeal, Appellant failed to include

the Notice of Appeal filed September 9, 2014 at 12:33 PM and the Affidavit of Service of Rule to Show Cause. The State therefore requests that this Court order Appellant to file a Record on Appeal that fully complies with the requirements of Rule 210 of the South Carolina Appellate Court Rules. In the event of further noncompliance by Appellant, the State requests that this Court dismiss this appeal with prejudice. Furthermore, the State asks this Court hold the time period for service and filing of the Final Brief of Respondent in abeyance pending a ruling on this motion.

In Appellant's "Motion to Correct/Amend Record," Appellant contends: 1) the Notice of Appeal filed September 9, 2014 at 12:30 PM¹ should be excluded because the Georgetown County Clerk of Court had no record of the document, and 2) she was never served nor was she given a Certificate of Service for the Rule to Show Cause. As to Appellant's first issue, Appellant's argument is meritless for two reasons. First, the documents provided to Appellant by Respondent, one of which was included in Appellant's "Supplement to Record on Appeal," are stamped and dated to show they were filed with the Georgetown County Clerk of Court. Regardless of whether the Georgetown County Clerk of Court was in actual possession of the documents when Appellant made her inquiry, their authenticity speaks for itself. Second, Respondent, troubled by Appellant's claim that the Georgetown County Clerk of Court was not in possession of the documents, contacted the Clerk of Court this morning. Jessica Smith of the Georgetown County Clerk of Court's Office confirmed they are in fact in possession of both Notices of Appeal filed by Appellant. Whether Appellant's claim the Clerk's Office had no record of the documents was wishful thinking or simply a miscommunication between she and

¹ In Respondent's Designation, Respondent included a Notice of Appeal submitted September 9, 2014 at 12:30 PM and a Notice of Appeal submitted September 9, 2014 at 12:33 PM. Puzzlingly, Appellant included only the former in her Record on Appeal, despite Counsel for Respondent sending her copies of both documents upon being informed she was unable to obtain them from the Georgetown County Clerk of Court.

the Clerk's Office, Appellant's claim that the documents should be stricken from the record is wholly without merit.

As to Appellant's second issue raised in her motion, there is no factual or legal support for the proposition that the Rule to Show Cause should be stricken because she was never served nor given a Certificate of Service. Significantly, one of the items from Respondent's Designation of Matter that Appellant has refused to include in the Record on Appeal is the Affidavit of Service of Rule to Show Cause (see attached). Appellant cannot willfully exclude the affidavit of service, and then asseverate the State's Rule to Show Cause must be excluded because there is no proof of service. Appellant's claim that the Rule to Show Cause must be excluded because it was never served on her is conclusively disproved by the Affidavit of Service that Appellant must include in the Record on Appeal. This Court, therefore should deny Appellant's "Motion to Correct/Amend Record." The State again requests this Court order Appellant to file a Record on Appeal that fully complies with the requirements of Rule 210 of the South Carolina Appellate Court Rules, or, in the alternative, dismiss the appeal for Appellant's continued failure to comply with the South Carolina Appellate Court Rules.

Respectfully submitted,

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

BY: 

V. Henry Gunter, Jr.
S.C. Bar No. 102259

Office of the Attorney General

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(803) 734-3727

January 31, 2016

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

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JAN 31 2017

SC Court of Appeals

APPEAL FROM Georgetown county
Court of General Sessions
Kristi L. Harrington, Circuit Court Judge

Appellate Case No. 2014-002776

THE STATE,RESPONDENT,

v.


LOUSHANDA MYERS,APPELLANT.

PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Motion to Compel and Return to Motion to Correct/Amend Record on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Loushanda Myers
27 Wateree Trail
Georgetown, South Carolina 29440

I further certify that all parties required by Rule to be served have been served.
This 31st day of January, 2017.


Keely Carter
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-7239



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JAN 31 2017
SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

January 31, 2016

Loushanda Myers
27 Wateree Trail
Georgetown, South Carolina 29440

RE: State v. Loushanda Myers
Appellate Case No. 2014-002776

Dear Ms. Myers:

I am enclosing two (2) copies of the Motion to Compel and Return to Motion to Correct/Amend Record in the above-referenced case.

Sincerely,

V. Henry Gunter, Jr.
Assistant Attorney General
S.C. Bar No. 102259

Enclosures

cc: Honorable Jenny A. Kitchings (original and six enclosed)
Victim Services