

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

APR 17 2017
SC Court of Appeals

Maite Murphy, Circuit Court Judge

Magistrate Court Uniform Traffic Ticket No. 4102P0310884
Intermediate Appellate Case No. 2016-CP-18-0490
Appellate Case No. 2016-001116

THE STATE,

RESPONDENT,

v.

FLOYD RILEY,

APPELLANT.

**RETURN IN OPPOSITION TO MOTION FOR LATE
FILING OF THE RECORD ON APPEAL**

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

I.

On December 12, 2015, Appellant was arrested for speeding in Dorchester County for going 80 miles per hour (mph) in a 55 mph zone. (Uniform Traffic Ticket No. 4102P0310884). The arresting officer requested a bail amount of four hundred and forty-five dollars (\$445). On March 4, 2016, Appellant’s case was called for trial before the Honorable Jackie G. Jenkins, Dorchester County Magistrate Judge, and a jury. Appellant was present and proceeded to trial which ended with the six person jury returning a unanimous guilty verdict. Appellant was

sentenced to pay a fine of four hundred and forty-five dollars (\$445). On March 11, 2016, Appellant timely appealed his conviction to the Dorchester County Court of Common Pleas, alleging errors by the trial court. On March 24, 2016, pursuant to Section 18-3-40 of the South Carolina Code, Judge Jenkins filed a “Transmittal of Traffic Appeal” wherein she made findings of fact and conclusions of law. (Transmittal of Traffic Appeal filed March 24, 2016, with the Dorchester County Clerk of Court).

On April 19, 2016, an appellate hearing was convened at the Dorchester County Courthouse before the Honorable Maite Murphy. Appellant appeared *pro se* and the State was represented by former Assistant Solicitor Kyle Leo Ward of the First Judicial Circuit Solicitor’s Office. In a Form 4 Order dated May 3, 2016, and filed May 13, 2016, the circuit court affirmed Appellant’s magistrate court conviction. (Order of Judge Murphy dated May 3, 2016).

II.

Appellant submitted a notice of intent to appeal the circuit court order affirming his conviction and sentence, which he served on Mr. Ward by mail on May 24, 2016. Appellant subsequently made a motion to order transcripts outside of deadline, which was served on Mr. Ward by mail on June 13, 2016. In an order filed June 21, 2016, this Court granted Appellant’s motion and directed that he inform the Court and the respondent when the transcript had been delivered. On August 16, 2016, Appellant filed an Initial Brief and on the same date served Mr. Ward with that Brief by mail.

III.

On October 18, 2016, the State submitted a “Motion to Dismiss Appeal for Failure to Correct Deficiency or, Alternatively, to Reset Time Limits from Proper Service of Appellant’s Designation of Matter.” This motion was based in part upon the fact that, when originally filed,

Appellant's initial brief was not accompanied by a designation of matter to be included in the record on appeal. Although Appellant apparently subsequently filed a designation of matter as directed by the Court in a deficiency letter, his attached "Certificate of Service" indicated it was served on the Honorable Diane S. Goodstein and Magalie Arcure Creech, Esquire, of the Finkel Law Firm, but not on either the Attorney General's Office or Mr. Ward. Based on this failure to timely and properly serve his designation of matter, the State moved to dismiss the appeal.

On October 24, 2016, Appellant submitted a reply to the motion to dismiss as well as a "Motion to Deny Respondent's Request for Additional time to file Initial Brief, and Designation of Matter." By Order filed December 8, 2016, this Court denied the State's motion to dismiss, denied Appellant's motion to deny additional time for the State to file its initial brief, and ordered the State to serve and file its initial brief within thirty (30) days of the order. On February 10, 2017, the State timely served and filed its "Initial Brief of Respondent" and "Designation of Matter."

IV.

Now, on April 7, 2017, Appellant has served and filed the "Motion for Late Filing of the Record on Appeal" which is the subject of the return in opposition now served and filed on behalf of the State.

V.

In his motion, Appellant states he was only "given a partial recording of the lower court of the jury trial" and claims to be "currently in the process of obtaining the full lower court recording from the Circuit Court because [sic] and have it transcribe [sic] for the ROA." In other words, the only grounds upon which Appellant now seeks permission for late filing of the record on appeal is so he can attempt to include something that was NOT designated for inclusion by either party. Appellant's October 24, 2016, designation of matter makes no mention whatsoever of an audio

recording or a transcript of an audio recording from his trial before the magistrate. Likewise, the State's February 10, 2017, designation of matter also does NOT designate these items. Indeed, the State's initial brief was written with the understanding, created solely by Appellant when he served his designation of matter, that Appellant intentionally chose NOT to designate these items and instead was electing to rely solely upon the magistrate's written return and the proceedings before the circuit court.

VI.

The South Carolina Appellate Court Rules provide in part that: "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. Rule 210(c), SCACR. Here, Appellant is asking for more time to serve and file the record on appeal so he can attempt to include matters beyond those designated by the parties. This should not be allowed. Indeed, inclusion of additional matters which have neither been provided to nor reviewed by the State would be prejudicial and would likely require the State to materially alter or amend several of the arguments in its initial brief. Appellant had every opportunity to designate all qualifying materials he wished to designate for inclusion in the record on appeal many months ago; however, he has waited until AFTER the State filed its initial brief to decide he now wants additional items to be included in the record on appeal. The State respectfully asks this Court to deny his request and to order timely filing of the record on appeal to include ONLY those matters properly designated by the parties.

WHEREFORE, the State respectfully requests that this Court deny Appellant's motion for late filing of the record on appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

BY: 

J. Benjamin Aplin
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ATTORNEYS FOR RESPONDENT

April 17, 2017

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PROOF OF SERVICE

I, Angela S. Bennett, certify that I have served the within "Return in Opposition to Motion for Late filing of the Record on Appeal" by depositing two copies of the same in the United States mail, postage prepaid, addressed to Floyd Riley, 341 Hudson Road, Saint George, SC 29477.

I further certify that all parties required by Rule to be served have been served. This 17th day of April, 2017.



ANGELA S. BENNETT
Legal Assistant

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Columbia, SC 29211
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ALAN WILSON
ATTORNEY GENERAL

April 17, 2017

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SC Court of Appeals

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

RE: State v. Floyd Riley
Appellate Case No. 2016-001116

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the "Return in Opposition to Motion for Late filing of the Record on Appeal" along with proof of service, for filing in the above-referenced appeal.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

JBA/ab
Enclosures

cc: Floyd Riley
Kyle Leo Ward, Esquire
Victim Services