

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
1220 Senate St Columbia, SC 29201

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Maite Murphy, Circuit Court Judge

Magistrate Court Traffic Ticket No. 4102P0310884
Case No. 2016-CP-18-0490(Court of Common Pleas)
Case No. 2016-001116 Court of Appeals)

THE STATE,

Respondent,

v.

FLOYD RILEY,

Appellant.

MOTION TO DISMISS

Floyd Riley
341 Hudson Rd
St George, South Carolina 29477
(843) 563-7812
Attorney for Appellant Pro SE

Other Counsel of Record:
Office of the Attorney General
J. Benjamin Apin
PO Box 11549
Attorney for Respondent

RECEIVED
MAY 15 2017
SC Court of Appeals

Appellant hereby makes a motion to dismiss the State's case due to the below points.

1. Motion to dismiss should be granted as based on the enclosed letter from the Magistrate Court for Dorchester County they cannot provide me with a copy of the trial date transcript on March 4, 2016.
2. The Magistrate court being fully aware that the trial was under appeal recorded over or destroyed the voice transcript which it now says it can't provide.
3. In accordance with South Carolina Civil Procedures RULE 607
COURT REPORTER TRANSCRIPTS AND TAPES (i) such recording and transcripts should be made available on written request. This court requires all audio recorded transcripts be transcribed into written transcripts by a State qualified transcriber; this cannot be done now as the magistrate court admits that they have no recording and cannot find any transcript of the jury trial hearing.
4. Respondent argues in his Return in opposition to Appellant's motion to add to the designation of matter that Rule 210(c), SCACR applies to adding to the designation of matter that the magistrate court recording was not presented to the lower court or tribunal. This does not ring true. The circuit court judge of the court of common pleas Dorchester County stated that she would review the magistrate court recording of the jury trial, after I challenged the court proceeding of the magistrate court judge. I also made argument to the court of common pleas that I was not allowed to question witnesses both these arguments are listed within the court transcripts of the appeal hearing before the court of common pleas which makes the transcripts recorded by the magistrate court vital for me to prove to this court that the magistrate court erred and that the court of common pleas upheld such errors in support of the magistrate ruling.

5. Appellant requested a copy of the magistrate court recorded transcript from the court of common pleas and was told by the clerk of court that they did not have a copy of the transcript, I was also allowed to look at the appeal file and there was no recorded copy there. There was however a copy of the DVD showing the officer making the stop on which the ticket was given. This now brings into question "If the court of common pleas had no recording to place in the file how could the judge presiding over the appeal have considered the trial court proceedings if the judge did not have a copy of the recording to listen to as she stated she would do at the end of the appeal hearing?"
6. It is clearly noted on the transcript of the lower court of common pleas that I argued that the jury foreman was unclear as to what to say for a verdict until the magistrate judge chastised him in open court, and that the judge did not pool the other jurors. Support for this argument strongly depends on the recorded magistrate court transcripts to show that the argument rings true.
7. Respondent argues in his Return in opposition to Appellant's motion to add to the designation of matter that Appellant chose to except the magistrate court transmittal to the court of common pleas in lieu of requesting the magistrate court transcript in the appellant designation of matter. This does not ring true the lower magistrate court does not type their transcript rather they record them, this means in order to submit these transcripts to this court appellant must have them transcribed by a state qualified transcriber of which appellant was attempting to do until appellant noticed that the entire jury case proceeding was not on the recording but only a small portion of the end of the hearing. Appellant notified this court of the partial recording and then requested the full recording from the magistrate court and was

given the attached notice that it is unrecoverable.

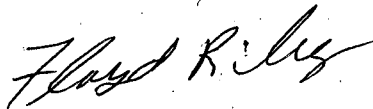
Conclusion

Appellant has a right to submit all relevant documents to the Designation of Matter as pertains to his case and to show error of the court of common pleas, by not having the recording available so that appellant could get it transcribe in written form it places high prejudice on appellant ability to reference his final brief to show this court the error of the court of common pleas in upholding the magistrate court ruling in clear violation as the magistrate transcript would reflect. Appellant maintains that the magistrate court judge's transmittal to the court of common pleas is in direct contradiction to the arguments of appellant at the appeal hearing concerning the magistrate court proceeding at jury trial, the only way for appellant to show error of the court of common pleas is to show the error of the magistrate court upon which the court of common pleas should have reversed the ruling. Appellant request that this court dismiss the State's case due to the magistrate court transcript being unavailable to appellant while the magistrate court knew that this case was in appeal and yet lost, destroyed, or recorded over the full jury trail hearing.

Respectfully

Floyd Riley

Pro Se



5-14-2019

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Case No. 2016001116 (SC Court of Appeals)

THE STATE, Respondent,

v.

FLOYD RILEY, Appellant.

CERTIFICATE OF SERVICE

The undersigned states that on May , 2017, he did caused a true and correct copy of **THE RECORD ON APPEAL**, and **Motion to Dismiss** to be served on the parties below by United States mail, proper postage affixed and addressed as follows:

Office of the Attorney General
J. Benjamin Apin
PO Box 11549
Attorney for Respondent

Floyd Riley _____ / /2017

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Floyd Riley
Pro SE

May 12, 2017

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

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MAY 15 2017

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find the original and (15) copies of the ROA in the above case. I keep in mind that the court's decision has not yet been made on my motion to add to the designation of matter which would alter the ROA to reflect the additions requested. I am submitting the ROA now to keep in form with the extension granted to file by May, 15 2017. Please also find the original and (6) copies of Appellant's motion to dismiss the State's case due to the outlined reasoning within the request, along with proof of service for filing in the above referenced appeal.

Sincerely

Floyd Riley
Attorney Pro Se

cc. J. Benjamin Aplin
Assistant Deputy Attorney General