

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case Number: 2011-CP-38-1397
Appellate Case Number: 2014-000168

William Breland,Respondent

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MAY 30 2017

SC Court of Appeals

v.

South Carolina Department of Transportation,Appellant

RETURN OF APPELLANT TO
MOTION FOR COSTS

On April 18, 2017, Respondent filed his Motion for Costs, pursuant to Rule 222 of the South Carolina Appellate Court Rules. On May 22, 2017, the Court of Appeals requested a response to this motion by Appellant. Pursuant to the May 22, 2017 request of the Court, Appellant files this Return.

Appellant requests that the Court exercise its discretion and issue its Order denying Respondent's Motion for Costs, or in the alternative, reducing the requested amount of \$1,553.49. "Notably, it is within the Court's discretion whether to award fees and costs under Rule 222." *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187,

199, 750 S.E.2d, 78, 84 (2013). Appellant's arguments in this case warranted further review by the Court of Appeals, as Appellant raised significant and novel issues of evidentiary law in South Carolina, as it relates to technological advances. Lengthy oral arguments further demonstrated the complexity of this matter and the continuing uncertainty surrounding the authentication and admissibility of electronic images. In short, this appeal, while unsuccessful, was not frivolous or imprudent.

Appellant South Carolina Department of Transportation hereby opposes the April 18, 2017 Motion for Costs in this action. Appellant requests that the Court deny the Motion, or in the alternative, reduce the amount as the Court sees fit, in its discretion, pursuant to Rule 222(d), SCACR.

Respectfully Submitted,



Richard B. Ness
Alison Dennis Hood
Ness & Jett, LLC
P.O. Box 909
Bamberg, SC 29003
Attorneys for Appellant SCDOT

May 2⁶~~5~~, 2017

CERTIFICATE OF SERVICE

I, the undersigned of the law offices of Ness & Jett, L.L.C, attorneys for Appellant, South Carolina Department of Transportation (SCDOT), do hereby certify that I have served all counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address, in the following case:
Breland v. SCDOT, Appellate Case: 2014-000168, Lower Court: 2011-CP-38-01379:

Pleadings: Return to Motion for Costs

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Via Hand Delivery
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V. Claire Allen, Deputy Clerk
S. C. Court of Appeals
P. O. Box 11629
Columbia, SC 29211


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NESS & JETT, L.L.C.

By:


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1916-1991

May 25, 2017

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SC Court of Appeals

Jenny Abbott Kitchings, Clerk of Court
S. C. Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: William Breland v. South Carolina Department of Transportation
Appellate Case No.: 2014-000168
Lower Court Case: 2011-CP-38-01379

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a Return of Appellant to the previously filed Motion for Cost, in reference to the above matter. I have also enclosed a Proof of Service of this document on counsel for the Respondent.

Please return the additional filed copy to me in the self-addressed, stamped envelope I have enclosed.

Thank you for your attention to this matter. If you need any additional information, please do not hesitate to contact me.

Sincerely,



Richard B. Ness
Alison Dennis Hood

RBN/adh

Enclosures

CC: J. Christopher Wilson, Esq. (Via Hand Delivery)
Daniel W. Luginbill, Esq. (Via Hand Delivery)
John S. Nichols, Esq.

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