

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Darlington County
The Honorable Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2017-000100

Kristopher Wilmont Berry,

Petitioner,

v.

State of South Carolina,

Respondent.

MOTION TO SUPPLEMENT APPENDIX

Pursuant to Rules 240 and 243(f)(1) of the South Carolina Appellate Court Rules, counsel for Respondent moves for this Court to allow Respondent to supplement the appendix in this case. In support of this motion, Respondent would present the following facts:

1. The petition for writ of certiorari and appendix in this case were filed on November 17, 2017. The appendix, however, does not contain certain relevant documents that were part of the record before the lower court.
2. To wit: at trial, records from the United States Marine Corps were submitted to the trial court as part of a hearing on the admissibility of Petitioner's prior bad acts for impeachment purposes. (Appx. 341-46, 431). The records were admitted as Court's Exhibit #2 (Appx. 12, 431). That exhibit was included in pages 300-351 of the Record on Appeal, and thereafter submitted to the PCR Court as part of the appellate records attached to Respondent's return. (Appx. 552). The entire

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S.C. SUPREME COURT

Record on Appeal, including its copy of Court's Exhibit #2, was part of the record before the PCR court at the evidentiary hearing.

3. Without the documents described above, the appendix is incomplete. Because the documents are relevant and pertinent in both the lower court and on appeal, and because the documents were properly part of the record before the lower court, without them the appendix does not satisfy the requirements of Rule 243(f)(1), SCACR. Therefore, Respondent moves this Court to include the above described documents in a supplemental appendix.

WHEREFORE, as the appendix is incomplete, counsel for Respondent respectfully requests this Court to: (1) grant the motion to supplement the appendix; and (2) accept the supplemental appendix as filed with this motion.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
S.C. Bar No. 101260
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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2 May, 2018

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Darlington County
Court of Common Pleas
The Honorable Roger E. Henderson, Circuit Court Judge

2013-CP-16-1002
Appellate Case No. 2017-000100

KRISTOPHER W. BERRY,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

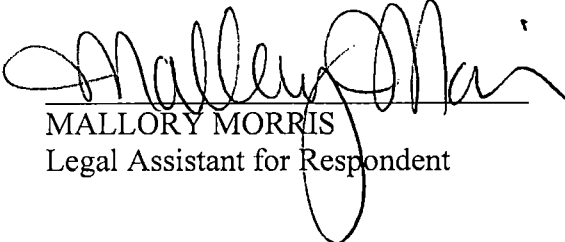
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of **Motion to Supplement Appendix** and **Supplemental Appendix** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Kathrine H. Hudgins, Esquire
1330 Lady Street, Suite 401
Columbia, SC 29201

This 2nd day of May, 2018.


MALLORY MORRIS
Legal Assistant for Respondent



ALAN WILSON
ATTORNEY GENERAL

May 2, 2018

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S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Kristopher W. Berry v. State of South Carolina
Appellate Case No. 2017-000100
Lower Court Case No. 2013-CP-16-1002

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Motion to Supplement Appendix** and the original and one (1) copy of the **Supplemental Appendix** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Johnny E. James Jr.
Assistant Attorney General
S.C. Bar No. 101260

JEJ/mm
Enclosures

cc: Kathrine H. Hudgins, Esquire