

IN THE COURT OF APPEALS

Appeal From Horry County  
The Honorable R. Markley Dennis, Circuit Court Judge  
Appellate Case No. 2017-001876

**RECEIVED**  
DEC 10 2018  
SC Court of Appeals

The State,

Respondent,

v.

Sidney St. Clair Moorner,

Appellant.

**REPLY TO APPELLANT'S RETURN T MOTION TO STRIKE ITEMS  
FROM DESIGNATION OF MATTER; HOLD APPEAL IN ABEYANCE;  
AND REQUIRE AN AMENDED INITIAL BRIEF OF APPELLANT  
AND DESIGNATION OF MATTER**

Respondent, through its undersigned counsel, hereby responds to Appellant's Return to Motion to Strike as follows:

1. Appellant concedes the documents specified in Respondent's Motion to Strike were marked for identification only, and were not entered as evidence. He further concedes the only issue he raises on appeal is whether the circuit court erred in denying his directed verdict motion. In the face of these concessions, however, Appellant argues the documents were properly included in his Designation of Matter because they were "presented to the trial judge." He also argues the documents "are relevant to the resolution of the issue on appeal – whether the state presented any direct or substantial circumstantial evidence that Appellant obstructed justice when he was interrogated, the recording of which was admitted as State's Exhibit 1." Even though the documents were never entered into evidence, Appellant asserts he designated the

documents to “ensure this Court had all information necessary in order to render its opinion,” and expresses confidence in “this Court’s ability to distinguish between evidence admitted at (sic),” and “to use the information contained in the record on appeal accordingly.”

2. Rule 209(c) of the Appellate Court Rules clearly place the burden on the parties to designate and include in the record on appeal only matter that is “relevant to the appeal.” To that end, a party must identify any irrelevant matter the opposing party designates that is **not** relevant to the appeal. The scope of what is relevant for purposes of designating and including matter in the record on appeal is defined by the issues raised in the appeal. As stated in the Respondent’s Motion to Strike, and conceded by Appellant, the only issue on appeal in this case is the circuit court’s denial of Appellant’s directed verdict motion.

3. The issue regarding inclusion of the disputed documents is not whether an appellate court can distinguish between documents marked for identification and documents entered into evidence. Rather, the issue is whether the appellate record should include only matter relevant to the issue before the appellate court, and once the record on appeal is compiled, the appellate court should not have to decide which matter in the record on appeal is relevant to that issue.

4. There is a significant distinction between matter technically “presented to the lower court or tribunal” under Rule 210, and matter that was **evidence introduced** at trial, which is the **only** information properly considered by the trial court when ruling on a directed verdict motion. Defendant’s Exhibit 1 (incident report), Exhibit 2 (interview transcript), and Exhibit 3 (partial transcript) were indeed used to cross-examine certain witnesses, but they still are **not** evidence, which is what makes them irrelevant to the sole issue Appellant raises on appeal – the propriety of refusing to direct a verdict.

5. No part of the incident report marked as Defendant's Exhibit 1 was ever entered as evidence at trial, which makes its relevance even more tenuous. As to the transcripts marked as Exhibits 2 and 3, the full recording of the interview was admitted into evidence as State's Exhibit 1, which will be before the Court as part of the record on appeal, and is the best evidence of what was said during the interview. Significantly, nothing in the record indicates portions of the video sound were unintelligible such that a written transcript was required.

6. To the extent documents were used at trial to "assisting and understanding the recording of the interrogation and in understanding the questioning of the officers," as Appellant asserts, the full extent of that use, and thus the only relevance they had, is clearly reflected in the trial transcript itself, particularly since that is the only thing the jury could consider for purposes of rendering a verdict. Consequently, the circuit court could only consider what was discussed during the testimony in ruling on the directed verdict motion. In other words, those documents are not relevant to the issue on appeal, and should not be included in the record on appeal.

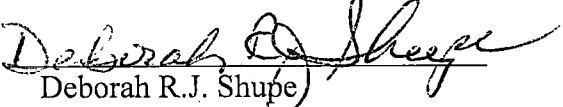
7. Taken to its logical conclusion, Appellant's argument renders the difference between marking something for identification only, and entering something into evidence superfluous. The fallacy of such a conclusion is amply demonstrated by Appellant's contention there was no dispute regarding the identity and accuracy of the documents at issue in this case. By marking the documents for identification only, Appellant avoided having the circuit court rule on the admissibility of the documents, including the authenticity, reliability, and completeness of the documents, which would have been required if the documents were offered as evidence for the jury's consideration.

8. Based on the foregoing, and the arguments set forth in Respondent's Motion to Strike, the State submits the Motion should be granted.

Respectfully submitted,

ALAN WILSON,

DEBORAH R.J. SHUPE  
Senior Assistant Deputy Attorney General

BY: 

Deborah R.J. Shupe  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 10, 2018

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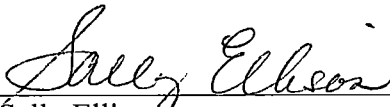
**PROOF OF SERVICE**

I, Sally Ellison, certify I served the Reply to Appellant's Return to Motion to Strike Items from Designation of Matter, Hold Appeal in Abeyance and Require an Amended Initial Brief of Appellant and Designation of Matter, by depositing a copy of same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire  
Assistant Appellate Defender  
SC Commission On Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 10<sup>th</sup> day of December, 2018.

  
Sally Ellison  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727



ALAN WILSON  
ATTORNEY GENERAL

December 10, 2018

**VIA HAND DELIVERY**

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

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SC Court of Appeals

Re: The State v. Timothy Sidney St. Clair Mooror  
Appellate Case No. 2017-001876

Dear Ms. Kitchings:

Enclosed are the original and seven (7) copies of the Reply to Appellant's Return to Motion to Strike Items from Designation of Matter; Hold Appeal in Abeyance; and Require an Amended Initial Brief of Appellant and Designation of Matter, with proof of service, for filing in the above-referenced appeal.

Sincerely,

Deborah R. J. Shupe  
Senior Assistant Deputy Attorney General

Enclosures

cc: Susan B. Hackett, Assistant Appellant Defender  
Victim Advocacy Division