

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Lee S. Alford, Circuit Court Judge
Appellate Case Tracking No. 2012-213281

The State,

Appellant,

vs.

Colin Duane Fitzgerald,

Respondent.

REPLY

Appellant, through its undersigned counsel, would respectfully show unto this Court as follows:

Respondent contends there are other issues which necessitate the appeal being allowed to proceed and not be held in abeyance. The only issue upon which Judge Alford ruled was the lack of audio in the video recording. (See Exhibit A to the State's Motion to Hold Appeal in Abeyance). Judge Alford never ruled on the other issues raised by Respondent, including the fact the video recording originated in a South Carolina Highway Patrol Trooper's vehicle instead of the arresting officer's vehicle or the lack of video cameras in the vehicles of the City of Fort Mill Police Department.

As a result, the only issue presented to this Court is the issue of whether the circuit court, sitting as an appellate court from the decision of the municipal court, should be affirmed in its decision the failure to capture audio in the video recording requires dismissal of the case. This is the crux of the issue pending before the South Carolina

Supreme Court in State v. Sawyer. As a result, the State believes it is best to hold this appeal in abeyance and allow this issue to be decided by the South Carolina Supreme Court prior to going forward on the nearly identical issue in this case.

The State submits it would be to the benefit of the parties and this Court to have the Supreme Court's decision in Sawyer prior to proceeding with the appeal, even if the other issues discussed by Appellant are raised and addressed in the appeal. The central issue in this appeal is the lack of audio. It was the only issue relied upon by Judge Alford to reverse the conviction. No matter what other issues may be raised by the parties, the issue of the effect of a lack of audio in the recording will need to be addressed by both parties in briefing and will likely form a significant portion of the decision of this Court in this case.

Even if Respondent raises his other issues in some manner, they will not be the only issues involved in the appeal. The outcome of Sawyer may not be entirely determinative but it will certainly play a significant role in any decision by the State to proceed with the appeal and in any ultimate decision by this Court on the issues presented.

Finally, Respondent has demonstrated no prejudice of any kind resulting from holding this appeal in abeyance until a ruling in Sawyer is issued by the Supreme Court. His Return argues the merits of the underlying issues, but he has failed to demonstrate any harm which would result from this Court holding the instant appeal in abeyance pending the Supreme Court's decision in Sawyer. The decision can only assist the parties and this Court to know how to proceed in the underlying appeal.

Accordingly, the State asks this Court to hold this appeal in abeyance pending a final opinion by the South Carolina Supreme Court. The State does not believe this would prejudice Respondent, whose conviction has been reversed by the circuit court. Further, the State believes this is the judicially efficient means of handling the underlying appeal which will, at a minimum, be significantly impacted by the outcome of the appeal in State v. Phillip Sawyer.

WHEREFORE, Appellant prays that the Court hold this matter in abeyance until the South Carolina Supreme Court issues an opinion in State v. Phillip Sawyer; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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February 13, 2013

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the Reply on Respondent by depositing a copy of same in the United States mail, postage prepaid, addressed to:

J. Tyler Burns, Esquire
1012 Market Street Suite 205
Fort Mill, South Carolina 29708

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

This 13th day of February, 2013.

Ellen R. DuBois

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