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Aug 10 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
The Honorable Frank R. Addy, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

DAZZELLE SMITH,

Appellant.

Appellate Case No. 2018-000952

**STATE'S RETURN TO MOTION TO TAKE
APPEAL OUT OF ABEYANCE AND STATE'S MOTION
TO REQUIRE APPELLANT TO AMEND
DESIGNATION OF MATTER**

Respondent State now makes its return to take the appeal out of abeyance. This matter was held in abeyance while the State attempted to locate a copy of a previously transcribed mistrial, some indeterminate portion of which was designated by Appellant, held October 9-10, 2017, before the Honorable Judge Hocker. The original court reporter has retired. It appears that a paper or word document copy of the previously transcribed mistrial is no longer available from Court Administration. However, the tapes apparently do exist, and the trial could be transcribed again by the designated court reporter.

The State would note it previously filed a motion to strike the transcript because the record

fails to indicate that Judge Addy, who presided over the subsequent trial, ever had the transcript before him.

The State disputes the characterization in Appellant's motion that a complete and adequate copy of the transcript was sent to the State by opposing counsel. The transcript is incomplete, lacks a cover page, and lacks a certificate of the court reporter. It also has more typographic errors than usual for a court reporter's work product. The only indication of the date is on page 5: at the top of the page it reads "TRIAL DAY 1: 10/9/2017."

On January 27, 2020, after the State's motion to strike was denied, the State sent a request to Court Administration, ordering a copy of the transcript. On January 30, 2020, the State sent an e-mail to opposing counsel requesting a copy of the transcript, noting the court reporter was retired and it would be potentially quicker than the State attempting to attain the transcript through Court Administration.

On February 18, 2020, the State sent another request to opposing counsel, noting in its e-mail that Court Administration had not indicated if the transcript was available, and again requesting a copy of the mistrial transcript from opposing counsel. This same day, the State moved to hold the case in abeyance pending receipt of the transcript. On February 19, 2020, the State received a partial transcript from opposing counsel. The transcript was missing a cover page, part of the index, and ended at page 89, although the last page of the index indicates the transcript is 258 pages in length. There are a few more typographic errors than normally expected from the typical work product of court reporters in this state. Significantly, the copy of the transcript also lacks a certificate of reporter.

On July 16, after a follow up request from our office, Court Administration informed us a

court reporter was assigned to the case. On August 4, following receipt of Appellant's motion, the State asked for an update from the court reporter. On August 5, the court reporter informed the State that the cost of the mistrial transcript would be in excess of \$1000. Presumably, based on length, a copy of the pretrial hearings would be approximately \$300-400.

Although Respondent is not satisfied with the quality of the transcript provided by opposing counsel, in light of the expected cost for a more suitable re-transcribed product, the State has determined it will not seek to have the mistrial transcribed again and will leave to this Court's discretion if the surviving portions of the transcript Appellant intends to include in the record are suitable for a record on appeal.

Motion for Appellant to amend designation of matter

Appellant's designation of matter merely designates the "Suppression Hearing Transcript, Oct. 9, 2017 before Judge Donald B. Hocker" without any more clarification. This designation is ambiguous as it indicates an entire transcript for designation whereas it appears that Appellant is actually intending to include only a portion of the October 9-10 transcript in the record. See Rule 209(a), SCACR (Requiring the Designation of Matter to set forth with specificity those parts of the transcript, . . ." proposed to be included in the record on appeal). Respondent requests this Court to require Appellant to amend the designation in accordance with Rule 209.

The State has attempted to resolve this matter without intervention of this Court. On February 19, after receiving the portion of the transcript as described above, the State sent a request by e-mail to opposing counsel asking for clarification as to which pages Appellant intended to designate. When receiving no response, the State sent a follow up request on March 11, asking for an indication of what transcript pages Appellant intended to designate.

On July 17, the State notified opposing counsel that a court reporter had been assigned. The State also requested opposing counsel to amend their designation of matter as it indicates an entire transcript for designation whereas it appears that Appellant is intending to include a portion of the October 9-10 transcript in the record. See Rule 209(a), SCACR (Requiring the Designation of Matter to set forth with specificity those parts of the transcript, . . .” proposed to be included in the record on appeal). Appellant did not respond to this request but instead filed its motion to take the matter out of abeyance. Respondent would respectfully request this Court to require Appellant to amend the designation so as to remove the ambiguity as to what portion of the mistrial transcript Appellant intends to include in the record on appeal.

Conclusion

Based on the foregoing, Respondent respectfully requests for this Court to require Appellant to amend the designation of matter in accordance with appellate court rules. Further, Respondent further requests this appeal to remain in abeyance until this Court rules on the State’s motion.

[Signature Block on the following page]

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
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ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within State's Return to Motion to Take Appeal Out of Abeyance and State's Motion to Require Appellant to Amend Designation of Matter on Appellant by email to William G. Yarborough, III, and Lauren C. Hobbis, Esquires, at the email addresses provided to AIS.

I further certify that all parties required by Rule to be served have been served.
This 10th day of August, 2020.



CAROLINE COLLINS
Administrative Coordinator
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

Caroline Collins

From: Caroline Collins
Sent: Monday, August 10, 2020 2:08 PM
To: 'wgyarborough@gmail.com'; 'laurenwgylaw@gmail.com'
Cc: David Spencer; William Blich
Subject: The State v. Dazzelle Smith (2018-000952)
Attachments: SMITH Dazzelle - State's Return to Motion to Take Appeal Out of Abeyance and State's Motion to Require Appellant to Amend DOM - 2018-000952 (02347910xD2C78).PDF

Follow Up Flag: Worldox

Good Afternoon Mr. Yarborough and Ms. Hobbis,

Attached please find a copy of the State's Return to Motion to Take Appeal Out of Abeyance and State's Motion to Require Appellant to Amend Designation of Matter in The State v. Dazzelle Smith (2018-000952). This document will be submitted today to the Court of Appeals through the AIS One Drive system.

If you will, please reply to confirm receipt of this email.

Thank you!

Caroline Collins

Administrative Coordinator
South Carolina Attorney General's Office
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