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May 02 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2018-002242

THE STATE,

Respondent,

v.

PHILLIP WAYNE LOWERY,

Appellant.

STATE'S REPLY

On April 27, 2022, Appellant filed a return to the State's motion to supplement the record. Appellant relied on Rule 210, SCACR, stating the State should not be permitted to add evidence to the record that was not before the trial court. As mentioned in the State's motion to supplement the record, the full unredacted video was in front of the trial court and is mentioned several times in the record. Trial counsel had concerns regarding the characterization of the prior car accident that led to this investigation, within the recordings. After hearing those concerns, the trial judge instructed the parties to redact the portions of the recordings which unnecessarily discussed the earlier traffic incident. The trial judge made it clear that he wanted the parties to discuss any and all issues with the video recordings and send him an email before the trial began in earnest the following day. (R 23-32, 39, 47-50). Further when trial counsel alleged he did not object earlier because he did not know what could or couldn't be played, the State responded that the recording issue was addressed at bar, on the record, and that the State along with trial counsel

redacted the video together the night before to ensure the parties complied with the trial judge's pretrial rulings. It is incorrect to assert that because the full unredacted video was not made an exhibit at trial that it was not before the trial court.

Appellant also argues that this motion is untimely under Rule 212, SCACR. Rule 212 states that without consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so. It does not say that it is not allowed, just that in order to do so after arguments one must motion the court. Rule 212, SCACR. Appellant cites to Jones v. Builders Inv. Group, LLC¹ in support of his argument stating that this Court denied a motion to supplement because it was not submitted to the circuit court prior to the court's order granting JNOV, so it wasn't considered. (Appellant's Return p. 3). This case differs because in Jones, the trial was held in 2012 and Jones was attempting to supplement the record with a letter documenting payments he made on a loan and the letter was dated May 8, 2014. In this case, the State is attempting to supplement the record with a video that was in existence at the time of trial and was available to the circuit court.


WHEREFORE, Respondent prays that this Court will accept the filing of the State's Supplemental Record on Appeal; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

AMBREE MULLER
Assistant Attorney General

¹ Jones v. Builders Inv. Group, LLC, 415 S.C. 321, 781 S.E.2d 737 (Ct. App. 2015)

By: 
Ambree Muller

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the State's Reply to Return by sending one copy electronically to Taylor D. Gilliam, Esquire, counsel of record for the Appellant, to the address listed for counsel on AIS.

I further certify that all parties required by Rule to be served have been served.
This second day of May, 2022.



Anne Mueller
Legal Assistant
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From: [Anne Mueller](#)
To: [Taylor D. Gilliam \(tgilliam@sccid.sc.gov\)](mailto:tgilliam@sccid.sc.gov)
Cc: [Warren, Kaylynn](#); [Ambree Muller](#); [William Blitch \(wblitch@scag.gov\)](mailto:wblitch@scag.gov); [Caroline Collins](#); [Anne Mueller](#)
Subject: State v. Phillip Wayne Lowery, 2018-002242
Date: Monday, May 2, 2022 4:14:00 PM
Attachments: [Lowery Phillip - 2018-002242 - State's Reply \(02970600xD2C78\).PDF](#)
[image001.png](#)

Good afternoon, Mr. Gilliam.

Attached to this email is the State's Reply to your Return to the State's motion to supplement the record on appeal. We will be filing our reply with the Court electronically this afternoon.

If you would, please confirm your receipt of our reply by return email.

Thank you for your cooperation.

Sincerely,

Anne Mueller, Legal Assistant to Assistant Attorney General Ambree Muller

Anne A. Mueller, Legal Assistant

Office of the South Carolina Attorney General

Criminal Appeals Division • Office 803-734-3922 • scag.gov



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