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**Mar 06 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
The Honorable J. Derham Cole, Circuit Court Judge

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Appellate Case No. 2019-001570

THE STATE, .....RESPONDENT,

v.

DEVIN ZACHARY ELIJAH RUTTLE, .....APPELLANT.

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**REPLY TO RETURN TO  
MOTION TO STRIKE ITEMS FROM  
APPELLANT’S DESIGNATION OF MATTER**

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Respondent is sympathetic to the last-minute nature of the hearing on Appellant’s motion for a new trial. However, the documents are not in evidence because, to put it plainly, Appellant failed to comply with Judge Cole’s instructions to confer with the solicitor and get back to him regarding what they both agreed would come into evidence. Therefore, only Appellant is to blame for the documents not being in the record. This Court should grant the motion to strike.

Appellant argues Respondent is narrowly interpreting the Appellate Court Rules, which would encourage a “decision in this case not on the merits of the case by rather on technicalities.” Return at 1. Respondent is merely asking this Court to apply the Rules as written. The judge gave Appellant as much time as he needed after the hearing was over to confer with the solicitor and get back to him. That is a straightforward instruction, not a “trap for the unwary lawyer.” The cases Appellant cites deal exclusively with parties who *have* submitted proposed

orders for trial court judges to sign after a hearing ended. This case is vastly different because Appellant did not submit anything to Judge Cole post-hearing as Judge Cole asked him to.

Appellant asks this Court to take judicial notice of the documents Respondent has moved to strike. However, Rule 201 of the South Carolina Rules of Evidence only allows courts to take judicial notice of facts that are not “subject to reasonable dispute.” The rule only allows courts to take notice of “adjudicative” or “legislative facts,” which are defined as “facts about the particular event which gave rise to the lawsuit and . . . [help] explain who did what, when, where, how and with what motive and intent” or “the factual grounds on which judges base their opinion ‘when deciding upon the constitutional validity of a statute, interpreting a statute, or extending or restricting a common law rule.’” Rule 201, SCRE Notes, lines 1-3. The documents in question do not fit either description. If Appellant tried to move any of the documents in at trial, a trial court could not take judicial notice of them, or, “instruct the jury to accept as conclusive” the facts within the documents. Rule 201, SCRE Notes, line 24. No: a hearing on admissibility would have to take place, a proper foundation would have to be laid, a 403 analysis would have to occur, etc. The documents are those that can and should be objected to as Respondent has.

South Carolina has firmly decided that only the facts and exhibits that were already placed in the record at the trial level will be considered at the appellate level. Respondent strenuously objects to Appellant’s suggestion that this Court remand for Judge Cole to consider the exhibits. Respondent would be prejudiced by such an action. Appellant already had an opportunity to place the exhibits in the record and he failed to utilize the opportunity. This Court should grant Respondent’s motion to strike and move this appeal along in due course.

Respectfully submitted,

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March 6, 2023

OFFICE OF THE ATTORNEY GENERAL

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THE STATE,

Respondent,

v.

DEVIN ZACHARY ELIJAH RUTTLE,

Appellant.

Appellate Case No. 2021-001570

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**PROOF OF SERVICE**

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I, Julianna E. Battenfield, as counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Reply to the Return to Respondent's Motion to Strike and Proof of Service have been forwarded to Appellant's counsel, Christopher T. Brumback, Esq., via email today, March 6, 2023 to [chris@brumbacklangley.com](mailto:chris@brumbacklangley.com) , and Spencer Langley, Esq., to [spencer@brumbacklangley.com](mailto:spencer@brumbacklangley.com) .

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

This 6th day of March 2023.

*s/Julianna E. Battenfield*  
Julianna E. Battenfield  
Assistant Attorney General