

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Apr 20 2023
SC Court of Appeals

APPEAL FROM FAIRFIELD COUNTY

Court Of Common Pleas

The Honorable Brian M. Gibbons, Circuit Court Judge

Case No.: 2021-CP-20-00024, Circuit Court
Appeals Court Docket No.: 2022-000987

Saint Luke Baptist Church, Respondent,

v.

Rayshawn Terry.....Appellant.

**RESPONDENT’S NOTICE OF MOTION AND MOTION TO INCLUDE ADDITIONAL
MATERIAL IN RECORD ON APPEAL PURSUANT TO SCAR RULE 210**

Respondent Saint Luke Baptist Church (“Respondent”), by and through undersigned counsel, hereby submits this Notice of Motion and Motion to Include Additional Material In Record On Appeal Pursuant To SCAR Rule 210.

SCAR Rule 209(a) provides as follows:

[a]t the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal. One copy of this Designation with proof of service shall immediately be filed with the clerk of the appellate court.

Appellant filed his Initial Brief on December 2, 2022, along with his Designation of Matter. Thereafter, Respondent filed its Initial Brief on January 3, 2023, along with its Designation of Matter, which included additional materials that were not included in Appellant’s Designation of Matter. Respondent’s Designation of Matter added the following items:

1. Plaintiff's First Set of Interrogatories to Defendant, June 10, 2021.
2. Plaintiff's First Set of Requests for Production, October 11, 2021.
3. Form 4, April 6, 2022, signed by Judge Brian M. Gibbons.

SCAR Rule 210(c) provides that,

[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal.

On March 23, 2023, Counsel for Appellant filed a Motion for Guidance on Record on Appeal, To File Outside Time and For Extension of Time. In this Motion, Appellant sought guidance from the Court as to whether Appellant must include all responsive documents within Defendant's Response to Plaintiff's First Set of Requests for Production, listed on Respondent's Designation of Matter, as the full inclusion of Defendant's Response would add 589 pages and 3 audio files to the Record on Appeal, and Appellant did not believe the documents were presented in whole to the lower court. To resolve this issue, on March 29, 2023, counsel for the respective parties conferred and agreed to include in the Record on Appeal only the written discovery pleadings signed by counsel, but not the documents produced.

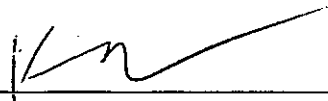
However, despite the Designation of Matter by Respondent and the parties' agreement regarding the extent of the discovery documents to be included in the Record on Appeal, the Appellant filed the Record on Appeal on April 3, 2023, excluding those documents listed and agreed to by the parties on March 29, 2023, on the properly filed Designation of Matter by Respondent. All of the documents requested by Respondent are relevant to the appeal and comply with Rule 210(c). Further, Counsel for Appellant has not presented to the Court a motion to strike or otherwise objected to the inclusion of the documents. Moreover, the parties reached an agreement to include the above-described documents.

Therefore, the Respondent respectfully requests that the above-listed items be included in the Record on Appeal.

[SIGNATURE BLOCK NEXT PAGE]

Respectfully submitted,

Boykin & Davis, LLC

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Attorneys for Respondent Saint Luke
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April 20, 2023
Columbia, South Carolina

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Saint Luke Baptist Church Respondent,

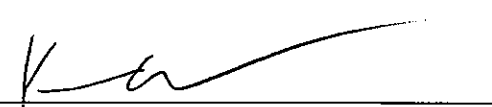
v.

Rayshawn Terry Appellant.

PROOF OF SERVICE

I certify that I have served the **RESPONDENT'S NOTICE OF MOTION AND MOTION TO INCLUDE ADDITIONAL MATERIAL IN RECORD ON APPEAL PURSUANT TO SCAR RULE 210** on the counsel of record listed below, by electronic mail and U.S. Mail a copy of same on April 20, 2023, addressed to:

Martin Foster, Esq.
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By: 
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