

RECEIVED

May 02 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable R. Keith Kelly, Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

vs.

JOHNATHAN OLIN BATCHELOR,

Appellant.

Appellate Case No. 2022-000160

**REPLY TO RETURN TO
MOTION TO STRIKE APPELLANT'S
SUPPLEMENTAL DESIGNATION OF MATTER
AND INITIAL REPLY BRIEF
FOR FAILURE TO COMPLY WITH
RULE 209(b) AND RULE 210(c), SCACR**

Respondent moved on April 20, 2023 for this Court to strike Appellant's supplemental designation of matter and initial reply brief because those pleadings present and argue matters outside the record. Appellant served its return to Respondent's motion on April 26, 2023. Respondent now makes its reply to Appellant's return.

I.

In his return, Appellant agrees the challenged documents were not before the trial court, but argues nonetheless these documents fall within this Court's inherent authority to take judicial notice. The first case Appellant relies on Wise v. Wise, 394 S.C. 591, 600-01, 716 S.E.2d 117,

122 (Ct. App. 2011) which notes an appellate court's ability to take judicial notice, but also warns that appellate courts are reluctant to notice judicial facts even when they are reliable, explaining that taking judicial notice may deprive the opposing party the opportunity to contest the matters noticed and that it may "violate the general principle that appellate review should be limited to the record." Id. Further, appellate courts limited by the cold record are not as sensitive to the appropriateness of judicial notice as a trial court. Therefore, appellate courts should limit notice of adjudicative facts to matters that are indisputable. Id.

Appellant attempts to argue around this limitation by claiming he is not seeking judicial notice of an adjudicative fact. Instead, Appellant contends, "[A]t this stage, Mr. Batchelor merely asks this Court to take judicial notice that after Dustin Tiller's cooperation in Mr. Batchelor's state court trial, the United States Government filed a motion to file a sealed motion related to Mr. Tiller's sentence." Ret to Mot to Strike, p. 3. First, as established at trial, Tiller provided assistance to the federal and state government in several cases. The federal government's motion does not indicate if its motion is related to Tiller's assistance in Appellant's case. Second, Tiller was clear at the time of trial that he was hoping for a downward departure and admitted he received a downward departure in the past for other cases. A downward departure for Tiller's sentence is not unexpected. Most importantly, Appellant admits that this information is not relevant to determination of the issues in the instant appeal, Appellant just wants this Court to know he is seeking information that, according to Appellant, someday might support a post-trial motion for after-discovered evidence. In other words, Appellant merely designated these items to be able to cast dispersions and produce innuendo on federal and state officials without actually having evidence. In the end, the information is not relevant to the issue at hand, determining if there was

trial court error. “A party shall not include any matter in his Designation which is not relevant to the appeal.” Rule 209(c), SCACR; See Williamsburg Rural Water & Sewer Co., Inc. v. Williamsburg County Water & Sewer Auth., 367 S.C. 566, 571, 627 S.E.2d 690, 693 (2006) (“Nothing in the appellate court rules permits a party to unilaterally add after-created evidence to the record.”). Therefore, Respondent requests this Court to strike Appellant’s initial brief and require an amended brief in compliance with Rule 210(c), SCACR; State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007) (excluding post-trial “Morris” letter not presented to the circuit court).

Since the initial reply brief and the supplemental designation of matter are not in compliance with the Appellate Court Rules, the initial brief and designation of matter should be struck, and Appellant should be required to amend both accordingly.

II.


WHEREFORE, Respondent prays that this Court strike Appellant’s Initial Reply Brief and Supplemental Designation of Matter, and require Appellant to amend the Initial Reply Brief of Appellant accordingly. Respondent further requests for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 68571

BY:



DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 2, 2023

RECEIVED

May 02 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2022-000160

THE STATE,

Respondent,

v.

JOHNATHAN OLIN BATCHELOR,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served a copy of the within Reply to Return to Motion to Strike Appellant's Supplemental Designation of Matter and Initial Reply Brief for Failure to Comply with Rule 209(b) and Rule 210(c) SCACR on E. Charles Grose, Jr., Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 2nd day of May 2023.



Anne A. Mueller
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

From: [Anne Mueller](#)
To: charles@groselawfirm.com
Cc: [David Spencer](#); [Anne Mueller](#)
Bcc: [Victim Services](#)
Subject: State of South Carolina v. Johnathan O. Batchelor, 2022-000160
Date: Tuesday, May 2, 2023 9:23:00 AM
Attachments: [image001.png](#)
[Batchelor Johnathan - 2022-000160 - Reply To Return To Motion To Strike \(03280994xD2C78\).PDF](#)

Good morning, Mr. Grose.

Attached to this email is the State's Reply To Return To Motion To Strike Appellant's Supplemental Designation Of Matter And Initial Reply Brief For Failure To Comply With Rule 209(b) and Rule 210(c) SCACR. We will be filing this Reply electronically this morning using the Court's AIS One Drive system.

Sincerely,

Anne Mueller, Legal Assistant For Senior Assistant Attorney General David Spencer

ANNE A. MUELLER, Legal Assistant
Office of the South Carolina Attorney General
Criminal Appeals Division
Office 803-734-3727
P.O. Box 11549 • Columbia SC 29211
scag.gov



This email, which includes any attachments, is considered confidential and may be legally privileged. If you have received it in error, please notify the sender immediately by reply email and then delete this message from your system. Please do not copy it, use it for any purposes, or disclose its contents to any other person. This email is subject to FOIA requests. Thank you for your cooperation.