

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Nov 08 2023

SC Court of Appeals

Appeal from Dorchester County  
Honorable Maite Murphy, Circuit Court Judge  
Appellate Case No. 2022-000412

THE STATE,

Respondent,

vs.

ANTHONY BERNARD MORRIS,

Appellant.

**MOTION TO STRIKE  
AND  
REQUIRE FILING OF  
AMENDED INITIAL BRIEF OF APPELLANT**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

In January of 2019, Appellant Anthony Bernard Morris was arrested after he assaulted and permanently injured a law enforcement officer during the course of an incident that occurred at his apartment complex. In March of 2022, the Dorchester County Grand Jury indicted Morris for assaulting an officer while resisting arrest. On March 21, 2022, a jury trial was commenced in the Dorchester County Court of General Sessions the Honorable Maite Murphy, circuit court judge, presiding. At the conclusion of the one-day trial, the jury convicted Morris as indicted. Following the verdict, the trial judge sentenced Morris to a seven-year term of imprisonment.

Morris then timely filed a notice of appeal. However, shortly after that, Morris timely filed a motion seeking reconsideration of his sentence. Based on the pending motion, this Court temporarily held the appeal in abeyance, and, on December 5, 2022, a hearing was held on the motion in the Dorchester County Court of General Session. At the conclusion of the hearing, the trial judge orally denied the motion, and that ruling was later confirmed through a written order filed on January 30, 2023. Subsequently, upon receiving the trial judge’s order, this Court permitted the appeal to proceed forward.

## II.

On July 10, 2023, Morris filed an Initial Brief of Appellant and Designation of Matter. In his brief, Morris—as support for his appellate arguments—referenced civil cases his victim purportedly initiated against him and another person involved in the incident and discussed the supposed nature of the allegations involved in those civil actions. (App. Br. p. 8). Furthermore, throughout his brief, Morris cited to and referenced facts related to his case, including facts about the contents of exhibits introduced during his trial, but, in doing so, Morris included no references at any point to the portions of the record that supposedly supported the factual assertions he has made. (App. Br. pp. 1-9). Meanwhile, in his designation of matter, Morris solely designated: (1) the transcripts from both his trial and the post-trial motion hearing; (2) body camera footage, which was introduced during his trial; (3) his motion for reconsideration of his sentences; and (4) the order denying that motion.

## III.

Pursuant to Rule 210(c) of the South Carolina Appellate Court Rules, the Record on Appeal “shall include all matter designated to be included by any party under Rule 209[.]” Critically, Rule 210(c) further provides the Record on Appeal “shall not . . . include matter *which*

*was not presented to the lower court or tribunal.*” Id. (emphasis added). Based on that rule, only matter before the circuit court can be included in the Record on Appeal, and parties are precluded from including matter that does not satisfy that fundamental requirement in the appellate record and briefs. See State v. White, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007) (“Morris’ statement was not presented to the lower court and cannot properly be included in the Record on Appeal.”); see also 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.”). And, importantly, an appellate court will *not* consider any matter not properly included in the Record on Appeal when reviewing a case on appeal. See Rule 210(h), SCACR (“Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court *will not consider* any fact which does not appear in the Record on Appeal.” (emphasis added)); see also Morris v. Tidewater Land & Timber, Inc., 388 S.C. 317, 333, n. 16, 696 S.E.2d 599, 608 (Ct. App. 2010) (“Under our appellate court rules, we may not consider any fact that does not appear in the record.”).

#### IV.

Relatedly, the South Carolina Appellate Court Rules govern the form and content of appellate briefs. See Rule 208, SCACR (establishing the required format for initial briefs); Rule 211, SCACR (establishing the required format for final briefs). Pursuant to Rule 208(b)(4) of our appellate court rules, appellate briefs *must* contain references to transcripts or other matter supporting the facts alleged within. See Rule 208(b)(4), SCACR (“The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged.

References shall also be made to where relevant objections and rulings occurred in the transcript. In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. After the Record on Appeal is prepared, these references shall be revised as provided by Rule 211(b)(1).”).

## V.

Upon reviewing the record from the trial court proceedings in Morris’s case—including all the portions of that record that have been designated by Morris for inclusion in the Record on Appeal—in preparation of the State’s brief, the State has been unable to locate any discussion of, arguments premised upon, or rulings concerning any civil actions initiated by Morris’s victim. Nevertheless, Morris has directly cited to and referenced such matter in his Initial Brief of Appellant as presently filed in support of the arguments he has advanced even though that matter does not appear to have ever actually been presented to or considered by the trial judge. Resultantly, pursuant to requirements of our appellate court rules, that matter could not and cannot properly be embodied in the appellate briefs just as it could not and cannot appropriately be included in the Record on Appeal. See South Carolina State Highway Dep’t v. Meredith, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) (“[C]ounsel is prohibited from embodying in their briefs any fact which does not appear in the record.”); see also Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.”). Moreover, this Court cannot properly consider that matter or the impermissible references to it contained in Morris’s appellate brief in resolving

Morris's case on appeal. See Roche v. South Carolina Alcoholic Beverage Control Comm'n, 263 S.C. 451, 455, 211 S.E.2d 243, 244 (1975) (“[A] trial judge will not be reversed for failing to act on a matter that was not submitted to him.”); cf. Tant v. Guess, 37 S.C. 489, 512-513, 16 S.E. 472, 480 (1892) (“ ‘According to the practice of the Court of Chancery from its earliest history to the present time, *no paper not before the court below can be read on the hearing of an appeal.*’ This court has, in numerous cases, recognized and affirmed this doctrine.” (emphasis added)). Therefore, this Court should strike Morris's appellate brief as presently filed and require the filing of an amended Initial Brief of Appellant omitting all Morris's improper references to matter that was not presented to or considered by the trial judge during the proceedings in his case.

## VI.

Furthermore, throughout his appellate brief, Morris has included numerous factual allegations in support of his appellate arguments. However, despite doing so, Morris did not include any identifying references to transcripts or other matter supporting those factual allegations. As a result, it remains entirely unclear precisely what Morris has based his factual allegations upon, and, thus, his appellate brief as presently filed does not currently comply with the requirements of our appellate court rules. See Rule 208(b)(4), SCACR (requiring references to the record in appellate briefs); see also Henning, 307 S.C. at 437, 415 S.E.2d at 794 (emphasizing counsel must provide materials that complies with the appellate court rules). Accordingly, this Court should require the filing of an amended Initial Brief of Appellant containing identifiable references to the transcripts or matter being referred to as support for Morris's factual allegations in a manner consistent with the requirements of our appellate court rules.

**VII.**

Based on the foregoing, the State respectfully asks this Court to strike the portions of Morris's Initial Brief of Appellant citing to and referencing matter that cannot properly be referenced or considered on appeal and to require Morris to serve and file an Amended Initial Brief of Appellant that contains no references to that particular matter but that does include the required references to the record as support for the other factual allegations made. Furthermore, the State asks this Court to hold the time period for the filing and service of the Initial Brief of Respondent and Designation of Matter in abeyance until this motion has been finally ruled upon.

**WHEREFORE**, the State prays this Court will strike Appellant's appellate brief as presently filed that contains references to matter not actually before the trial court; require the service and filing of an Amended Initial Brief of Appellant omitting any reference to the improper matter and also including citations to the record as required by Rule 208(b)(4) of the South Carolina Appellate Court Rules; hold the time period for service and filing of the Initial Brief of Respondent and Designation of Matter in abeyance pending a ruling on this motion; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

MARK R. FARTHING  
Senior Assistant Deputy Attorney General



By: \_\_\_\_\_  
Mark R. Farthing  
S.C. Bar Number 76901

November 8, 2023

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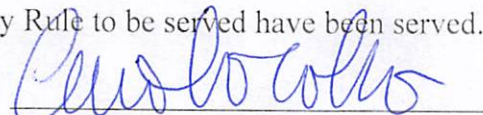
Appellant.

**PROOF OF SERVICE**

I, Caroline Collins, certify I have served the within Motion to Strike and Require Filing of Amended Initial Brief of Appellant on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Reagan Singletary, Esquire  
The Singletary Group, LLC  
685 Highway 15 South  
St. George, South Carolina 29377

I further certify all parties required by Rule to be served have been served.  
This 8th day of November, 2023.



CAROLINE COLLINS  
Administrative Coordinator  
Office of the Attorney General

**Caroline Collins**

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**From:** Caroline Collins  
**Sent:** Wednesday, November 8, 2023 5:07 PM  
**To:** reagan@thesingletarygroup.com  
**Cc:** Mark Farthing  
**Subject:** The State v. Anthony Bernard Morris (2022-000412)  
**Attachments:** Morris.Motion to Strike (03432360xD2C78).PDF

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Good Afternoon Ms. Singletary,

Attached please find a Motion to Strike and Require Filing of Amended Initial Brief of Appellant in The State v. Anthony Bernard Morris (2022-000412). This motion will be filed today with the South Carolina Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you,

**CAROLINE COLLINS**, Administrative Coordinator  
South Carolina Attorney General's Office  
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