

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Aug 12 2024

SC Court of Appeals

Appeal from Beaufort County
The Honorable Robert J. Bonds, Circuit Court Judge
Appellate Case No. 2023-000288

THE STATE,

Respondent,

vs.

JUSTIN BRODIE GRANET,

Appellant.

**MOTION TO STRIKE
AND
REQUIRE FILING OF
AMENDED RECORD ON APPEAL**

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

I.

While preparing the State’s final brief in the case sub judice, the State reviewed the contents of Appellant’s Justin Brodie Granet’s record on appeal. Upon doing so, the State discovered that Appellant’s Court’s Exhibits 9 and Court’s Exhibit 10 differed from what the State received from the Beaufort County Clerk of Court’s Office. As a result, and for the reasons that follow, the State is now moving to: (1) strike the record on appeal as presently filed; and (2) require the filing of an amended record on appeal.

II.

As to the procedural history of Granet’s case¹, Appellant was indicted by a Beaufort County Grand Jury for two counts of kidnapping, one count of first-degree assault and battery, one count of possession of a weapon during the commission of a violent crime, and one count of possession with intent to distribute marijuana. The State called all of the counts for trial, but the court granted a motion made by Appellant’s trial counsel to sever the trial of the drug charge. The State did not seek to try co-defendant, Chris Bliss, jointly with Appellant. Appellant proceeded to a jury trial February 13-16, 2023, in the Greenville County Court of General Sessions before the Honorable Robert J. Bonds. The jury found Appellant guilty as charged on each count. Appellant was sentenced to five years’ incarceration for the weapons charge, ten years’ incarceration for first-degree assault and battery, and twenty years’ incarceration suspended to the service of fourteen with two years’ probation on each of the kidnapping charges. The sentences were to run concurrently.

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. And, importantly, an appellate court will *not* consider any matter not

¹ The records from Granet’s current criminal appeal in this Court are presently available through the South Carolina Appellate Court Public Index. Appellate Records for State v. Justin Brodie Granet, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=77958>.

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.

In Appellant’s record on appeal Court’s Exhibit 9 consisted of 18 pages and Court’s Exhibit 10 consisted of 16 pages. In the records the State received from the Beaufort County Clerk of Court, Exhibit 9 and 10 were only one page. The State verified with the Clerk of Court that we received everything that they had marked as Court’s Exhibit 9 and 10 and the Clerk of Court confirmed that while the one-page Exhibits were part of a larger packet, only those pages were marked and entered as the Court’s Exhibits 9 and 10. Appellant’s record on appeal included portions of the packet that were clearly not in front of the trial court and therefore should not be included in the record on appeal or considered by this court.² Further, there is identifying information of the witnesses and victims that should have been redacted contained in the excess portions of the exhibits.

V.

Based on the foregoing, the State respectfully asks this Court to: (1) strike the record on appeal as presently filed; (2) require the filing of an amended redacted record on appeal that includes only the matter that was part of the lower court record as required by our appellate court

² The sticker referring to Court’s 9 is on the 6th page of the 18-page packet that Appellant refers to as Court’s 9 in the index. The sticker referring to Court’s 10 is on the 4th page of a 16-page packet.

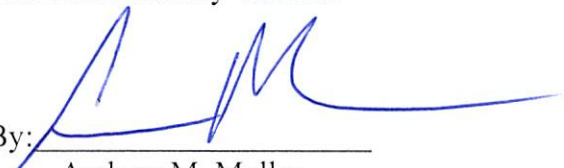
rules; (3) Furthermore, the State asks this Court to hold the time period for the filing and service of the Final Brief of Respondent in abeyance until this motion has been finally ruled upon. By granting such relief, this Court will ensure it ultimately conducts proper appellate review in Granet's case and will likewise ensure a regrettable error will be corrected as soon as it was discovered and before it can lead to any unjust results on appeal. See State v. Thompson, 68 S.C. 133, ___, 46 S.E. 941, 943 (1904) (recognizing the longstanding rule a court in South Carolina should correct a mistake at the earliest opportunity when and if it is possible to do so).

WHEREFORE, the State prays this Court will strike Appellant's Record on Appeal as presently filed; require the service and filing of an Amended Record on Appeal that comply with the requirements of the South Carolina Appellate Court Rules; hold the time period for service and filing of the Final Brief of Respondent 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,

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By: 

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PROOF OF SERVICE

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

James A. Brown, Jr., Esquire
Law Offices of Jim Brown, P.A.
PO Box 592
Beaufort, SC 29901
lawoffice@lojbpa.com

I further certify all parties required by Rule to be served have been served.
This 12th day of August, 2024.



GRACE SOMMER

Legal Assistant
Office of the Attorney General