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**Dec 06 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

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THE STATE,

Respondent,

vs.

ANTHONY BERNARD MORRIS,

Appellant.

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

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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 the original version of his Initial Brief of Appellant along with his Designation of Matter. In his original 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. (First App. Br. p. 8). 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. (App. Des.). Thus, Morris did *not* designate any filings, exhibits, documents, or other items related to the civil cases he had referenced in his brief. (App. Des.).

## **III.**

Because there were no discussions of, arguments premised upon, or rulings concerning any civil actions initiated by Morris's victim during the trial court proceedings in his case, the State subsequently moved to strike Morris's Initial Brief of Appellant and require the filing of an Amended Initial Brief of Appellant omitting such improper references to matter that was plainly

not before the trial judge. 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.”). However, because Morris did *not* designate any items concerning the purported civil cases referenced in his appellate brief in his Designation of Matter, the State had no reason to and did *not* move to strike Morris’s Designation of Matter, which correctly only designated matter that was before the trial judge.

#### IV.

Through an order dated January 9, 2024, this Court granted the State’s motion to strike the portions of Morris’s Initial Brief of Appellant “referenc[ing] matters not presented to lower court and not provided for by Rule 208(b)(1)(C)[.]” (Jan. 2024 Order). This Court further directed Morris to file an Amended Initial Brief of Appellant, which he subsequently did on April 12, 2024. (Jan. 2024 Order).

#### V.

Subsequent to that, the State filed its Initial Brief of Respondent and Designation of Matter on June 12, 2024. (Resp. Br. pp. 1-20; Resp. Des.). In its designation of matter, the State designated the following for inclusion in the Record on Appeal: (1) relevant portions of the March 2022 trial transcript; (2) relevant portions of the December 2022 post-trial hearing transcript; (3) the indictment; (4) the sentencing sheet; (5) the arrest warrant; (6) Morris’s March 2022 motion for reconsideration of his sentence; (7) the January 2023 order denying that motion; and (8) several recordings that were admitted into evidence as exhibits during trial. (Resp. Des.). And, like Morris, the State correctly did *not* designate any filings, exhibits, documents, or other items related to any civil cases. (Resp. Des.).

## VI.

On November 1, 2024, Morris filed the Record on Appeal with this Court.<sup>1</sup> In that record, Morris included the following items: (1) the March 2022 trial transcript; (2) the December 2022 post-trial hearing transcript; (3) the January 2023 order denying the motion for reconsideration; (4) the sentencing sheet; (5) the indictment; and—despite not being referenced in the record’s included index—(6) the arrest warrant. (R. p. 1; p. 98; pp. 113-114; p. 116; p. 118). Furthermore, although *not* designated by either party, Morris *also* included in the Record on Appeal as presently filed a summons, complaint, and demand for jury trial from a civil case that appears to have been filed in the Dorchester County Court of Common Pleas in January 2021. (R. pp. 120-129). Meanwhile, Morris did *not* include his March 2022 motion for reconsideration of his sentence, which was actually presented to the trial judge and was properly designated for inclusion in the record by both the State and Morris himself.

## VII.

As previously noted by the State in the first motion to strike it has had to file in Morris’s appeal, the Record on Appeal—pursuant to Rule 210(c) of the South Carolina Appellate Court Rules—“shall include *all* matter designated to be included by any party under Rule 209[.]” Rule 210(c), SCACR (emphasis added). And, again as previously noted by the State during Morris’s appeal, Rule 210(c) further explicitly provides the Record on Appeal “shall not . . . include matter *which was not presented to the lower court or tribunal.*” *Id.* (emphasis added). Accordingly, based on the plain mandates of South Carolina law, the Record on Appeal *must* include all the matter properly designated by the parties for inclusions and *cannot* validly include matter that was not before the trial court. *Id.*; see Williamsburg Rural Water & Sewer Co., Inc.

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<sup>1</sup> Morris did not submit his proof of service for the Record on Appeal until December 2, 2024.

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.”).

### VIII.

In the Record on Appeal as presently filed, Morris has improperly failed to include all the matter designated by the parties by omitting his March 2022 motion for reconsideration of his sentence. Thus, the Record on Appeal as presently filed is currently incomplete. Rule 210(c), SCACR. Furthermore and more troublingly, Morris has *also* embedded in the Record on Appeal as presently filed various documents from a civil case that were neither designated for inclusion in the Record on Appeal by any party nor were presented to the trial judge during the circuit court proceedings conducted in the criminal case to which his current appeal actually relates. See Rule 210(g), SCACR (“The act of filing the Record on Appeal constitutes a certificate that the Record on Appeal contains all material proposed to be included by any of the parties *and not any other material.*” (emphasis added)); 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)). Accordingly, because the Record on Appeal as presently filed does not contain all the designated matter it was required to contain and also contains matter it cannot properly contain, it does not currently comply with the plain mandates of our state’s appellate court rules and must be stricken. Rule 210(c), SCACR; see 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.”). Therefore, this Court should strike the Record on Appeal as presently filed and require Morris to file an amended Record on Appeal including all the properly-designated matter *and nothing else*, including any undesignated matter that was never presented to the trial judge and, thus, cannot appropriately be considered on appeal. 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.”).

**WHEREFORE**, the State prays this Court will strike the Record on Appeal as presently filed; require the service and filing of an Amended Record on Appeal that complies with all the requirements of Rule 210 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,

ALAN WILSON  
Attorney General

MARK R. FARTHING  
Senior Assistant Deputy Attorney General



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

December 6, 2024

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**PROOF OF SERVICE**

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I, Caroline Collins, 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:

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 6th day of December, 2024.

  
\_\_\_\_\_  
CAROLINE COLLINS  
Administrative Support Manager  
Office of the Attorney General