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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM DORCHESTER
COUNTY
Court of General Session**

Maite Murphy, Circuit Court Judge

Appellate Case No. 2022-00412

The State,

Respondent,

v.

Anthony B. Morris,

Appellant.

**APPELLANT'S MOTION TO
STRIKE THE RESPONDENT'S
IMPROPER FILING OF
OF A REPLY TO RETURN
TO MOTION TO STRIKE
AND REQUIRE FILING OF
AMENDED RECORD ON APPEAL**

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The Singletary Group
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(803) 552-6957
Attorney for Appellant

MOTION TO STRIKE RESPONDENT'S IMPROPER FILING

COMES NOW the Appellant, Anthony Morris, by and through undersigned counsel, and respectfully moves this Court to strike the Respondent's improperly filed Reply to Return to Motion to Strike and Require Filing of Amended Record on Appeal, pursuant to Rule 240 and Rule 211 of the South Carolina Appellate Court Rules (SCACR) and the Court's inherent authority to regulate filings. In support of this motion, the Appellant states the following:

On October 25, 2024, the Appellant timely filed the Final Brief and Record on Appeal. Respondent received these filings by October 29, 2024. On December 2, 2024, at the Court's request, the Appellant electronically filed the certificate of service confirming that the Record on Appeal and final brief had been served on October 25. On December 6, 2024, the Respondent filed a Motion to Strike portions of the Record on Appeal. The Court has previously granted continuances initiated by the Appellant, and the Appellant timely responded to the Respondent's Motion to Strike on February 13, 2025. However, on February 21, 2025, the Respondent, without obtaining leave of the Court, improperly filed a Reply to Return to Motion to Strike, further attempting to extend the briefing process beyond what is permitted under the appellate procedure.

The respondent's filing is procedurally improper because the South Carolina Appellate Court Rules do not allow for a reply to a return without first obtaining leave of the Court, as stated in Rule 240, SCACR. Courts have consistently disfavored such unauthorized filings as they delay proceedings and improperly extend briefing schedules. A reply to a return is only allowed if the reply introduces new arguments that the opposing party had no prior opportunity to address, which was not the case here. Rule 211, SCACR, governs the briefing schedule and does not provide for additional filings beyond what is specified.

If the Court allows the Respondent's improper filing to remain, it would set a problematic precedent, allowing parties to circumvent briefing rules and unilaterally extend appellate litigation. Attached hereto as Exhibit A is the Respondent's Reply to Return to Motion to Strike and Require Filing of Amended Record on Appeal filed on February 21, 2025. Attached hereto as Exhibit B is the Appellant's Reply to Respondent's Motion to Strike and Amend Record on Appeal, filed on February 13, 2025, which properly opposed the motion within the procedural framework.

Appellant respectfully requests that this Court strike Respondent's Reply to Return to Motion to Strike as an improper filing under Rule 240 and Rule 211 of the SCACR and grant such further relief as the Court deems just and appropriate.

Respectfully submitted,

/s/ Reagan Singletary
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Attorney for Appellant

March 3, 2025

Exhibit A

STATE OF SOUTH CAROLINA
IN THE 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.

**REPLY TO RETURN TO
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.

On October 29, 2024, the State received a package containing Morris’s Record on Appeal. That physical copy of the Record of Appeal—which was the only copy the State received—was undated and not accompanied by a proof of service indicating when it had been served. Thereafter, on November 1, 2024, this Court received Morris’s Record on Appeal. Again, Morris’s submission did *not* include a proof of service despite one being plainly required by our state’s appellate court rules. See Rule 210(a), SCACR (“Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party

who has served a brief. Proof of service of the Record shall be *immediately* filed with the clerk of the appellate court.” (emphasis added)). Based on that deficiency, this Court—on November 19, 2024—alerted Morris via letter he was required to provide a proof of service within ten days or his appeal would be dismissed. Not until December 2, 2024, did Morris finally submit the required proof of service for the Record on Appeal.

II.

Four days later on December 6, 2024, the State submitted its motion asking this Court to strike the Record on Appeal as presently filed and require Morris to file an amended Record on Appeal. The basis for the State’s motion was Morris’s Record on Appeal as presently filed: (1) failed to include all the matter designated by both parties; and (2) contained matter that had not been designated by either party for inclusion in the Record on Appeal *and* that was not actually presented to the trial judge during the proceedings conducted in Morris’s case. See Rule 210(c), SCACR (“The 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.”).

III.

Sixty-nine days later on February 13, 2025, Morris submitted a return to the State’s motion entitled “Reply to Respondent’s Motion to Strike and Amend Record on Appeal.” Through that return, Morris concedes—as he must—the documents he included in the Record on Appeal that the State has asked this Court to strike were *not* presented to the trial judge during the trial court proceedings in his case. Nevertheless, Morris opposes the State’s motion for a variety of different reasons, including on the ground it was supposedly “procedurally improper

and untimely.” Meanwhile, at no point in his return did Morris address the State’s contention the Record on Appeal as presently filed did not include all the matter designated by the parties.

IV.

Turning to Morris’s contention the State’s motion to strike was “procedurally improper and untimely,” Morris maintains “[t]he [State]’s final brief was due 30 days after the service of [his] final brief, which was served on the October 25, 2024.” Relying on that perceived timeline of unclear origin, Morris maintains the State was required to file either its final brief or its motion challenging the Record on Appeal within the thirty-day period he believes was applicable and, by failing to do so, forever waived its ability to challenge the contents of the Record on Appeal regardless of whether those contents complied with the requirements of the South Carolina Appellate Court Rules or not. Perhaps unsurprisingly, Morris cites no rules, case law, or authority of any kind to support that proposition. See State v. Garner, 389 S.C. 61, 67, 697 S.E.2d 615, 618 (Ct. App. 2010) (explaining conclusory, unsupported arguments will be deemed abandoned on appeal); cf. State v. Mazique, 419 S.C. 282, 299, 797 S.E.2d 730, 739 (Ct. App. 2016) (“Mazique fails to cite to any case law for these assertions; therefore, we find he has abandoned them.”).

Pursuant to the requirements of our appellate court rules, *both parties* are required to serve and file their final briefs within *twenty* days of the service of the *Record on Appeal*. See Rule 211(a), SCACR (“Within twenty (20) days after the service of the Record on Appeal, each party shall serve a copy of the party's final brief(s) on every other party to the appeal, and file the final brief(s) with the clerk of the appellate court.”). However, in the case sub judice, Morris sent his undated Record on Appeal to the State and this Court with *no proof of service*, which is an important accompanying document required by the mandates of the appellate court rules. See

Rule 210(a), SCACR (“Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief. Proof of service of the Record shall be *immediately* filed with the clerk of the appellate court.” (emphasis added)). Since no proof of service was provided to the State or immediately filed with this Court as required, Morris’s Record on Appeal failed to comply with the plain requirements of our appellate court rules, which is perhaps best demonstrated by the fact this Court sent a deficiency letter to Morris requiring him to correct that deficiency within ten days or face dismissal of his appeal. Once Morris had finally done so and served all the documents necessary for him to have complied with the service requirements for a Record on Appeal, the State—which had no way to know with accuracy when the pertinent timelines of our rules started to run until it was made aware of precisely when the Record on Appeal had truly been served—*promptly* submitted its motion to strike. Therefore, even assuming some time limit for a party to file a motion to strike a non-conforming Record on Appeal does exist in South Carolina despite one not appearing anywhere in our appellate court rules, the State’s motion to strike could not fairly or logically be considered untimely under the circumstances involved.¹

V.

Turning to Morris’s contention this Court should ignore the fact the Record on Appeal contains matter that was neither designated by the parties for inclusion in it nor actually presented to the trial judge, Morris maintains that undesignated matter—although never actually presented to the trial judge—was orally *referenced* during discussions that occurred below.

¹ Moreover, assuming for argument’s sake the State’s motion was somehow untimely, the State would respectfully ask this Court to accept it out of time just as it has already done for Morris in connection to an earlier untimely filing on his part. See Rule 263(b), SCACR (“The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof.”).

Based on those “mere references,” Morris appears to maintain it was somehow proper to include that undesignated matter that was not presented to the trial judge in the Record on Appeal he filed and, if it was *not* proper pursuant to our appellate court rules, he should nevertheless be permitted to “amend” the Record on Appeal to include it anyway. As support for that request, Morris maintains judicial notice can be taken of the documents because they are public records and further asserts they are “integral” and necessary for a “full and fair review of the trial court’s decision-making.”

Notwithstanding the fact the documents should have actually been *presented to the trial judge* if Morris believed they were “integral” to a proper resolution of the case and he wanted the trial judge to consider them, his own arguments demonstrate exactly why Rule 210(c) prohibits the Record on Appeal from containing any matter not before the trial judge: full and fair review of a trial judge’s ruling cannot properly involve review of matter *that was never actually before the trial judge* because such review would wholly deprive the trial judge of any opportunity to ever consider the matter in the first instance. See Rule 210(c), SCACR (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”); see also *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000) (explaining South Carolina’s imposition of procedural requirements on appellants “is meant to enable the lower court to rule properly after it considered all *relevant facts*, law, and arguments” (emphasis added)); Jean Hoefler Toal et al., *Appellate Practice in South Carolina* 418 (3rd ed. 2016) (“Because any supplemental matter becomes part of the record, a party *may not seek to include matter not previously presented to the lower court* or administrative tribunal.” (emphasis added)). Thus, Morris’s own arguments in his return demonstrate the correctness of the State’s arguments in its motion to strike, and this Court—consistent with well-established and

consistently-followed South Carolina law—should strike Morris’s Record on Appeal as presently filed since it contains matter Morris admittedly did not present to the trial judge whose ruling he is now seeking to challenge on appeal based on that unrepresented matter. 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)); 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.”).

VI.

Finally, to the extent Morris has failed to address at all the fact the Record on Appeal as presently filed is *also* deficient because it does not include all the matter designated by the parties, this Court obviously should require the filing of an amended Record on Appeal that contains all the designated matter since that is something unambiguously required by the plain mandates of our State’s appellate court rules. See Rule 210(c), SCACR (“The Record on Appeal shall include all matter designated to be included by any party under Rule 209[.]”). Indeed, unless and until that matter is included in the Record on Appeal, the State will not be able to complete its final brief in a manner that complies with the requirements of Rule 211 of the South Carolina Appellate Court Rules. See Rule 211(b)(1), SCACR (“The references [to the record] in the initial brief shall be revised [in the final brief] to indicate where the material appears in the Record on Appeal.”). Therefore, the State—as it did in the most-recent motion to strike it has had to file in Morris’s case—again asks this Court to require Morris to file a Record on Appeal that actually complies with our appellate court rules. 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.”).

WHEREFORE, the State—as previously requested—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

February 21, 2025

STATE OF SOUTH CAROLINA
IN THE 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,

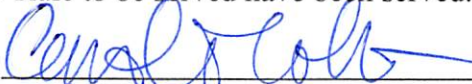
Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Reply to Return to 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
297 South Metts Street
St. George, SC 29477
reagan@thesingletarygroup.com

I further certify all parties required by Rule to be served have been served.
This 21st day of February, 2025.



CAROLINE COLLINS
Administrative Support Manager
Office of the Attorney General

Exhibit B

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM DORCHESTER
COUNTY
Court of General Session**

Maite Murphy, Circuit Court Judge

Appellate Case No. 2022-00412

The State,

Respondent,

v.

Anthony B. Morris,

Appellant.

**REPLY TO RESPONDENT'S
MOTION TO STRIKE AND
AMEND RECORD ON
APPEAL**

Reagan Singletary
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Attorney for Appellant

I. Introduction

The Appellant, Anthony Bernard Morris, respectfully submits this reply opposing the Respondent's motion to strike the Record on Appeal and its request for an Amended Record on Appeal. The Respondent's motion is procedurally improper and untimely. Moreover, the Respondent's reliance on the late filing of the certificate of service as justification for their motion to strike is misplaced and does not excuse their failure to meet the filing deadlines. However, to the extent the Court finds the motion timely, the Appellant submits the following additional arguments in support of denying the motion.

II. Argument

A. The Respondent's Motion to Strike Is Untimely

The Respondent's final brief was due 30 days after the service of the Appellant's final brief, which was served on the Court on October 25, 2024. This means that the Respondent's final brief should have been filed no later than November 24, 2024. However, the Respondent did not file their brief within the required period nor did they request an extension. Instead, the Respondent filed this motion to strike on December 6, 2024—12 days after their deadline had passed. This delay violates the South Carolina Appellate Court Rules and renders the motion untimely.

If the Respondent had concerns regarding the Record on Appeal, they were obligated to raise those concerns promptly and within the prescribed appellate deadlines. The Respondent's delay in filing this motion prejudices the Appellant by unnecessarily prolonging the appellate process and should not be excused. Furthermore, by failing to file a timely motion to strike or request an extension, the Respondent has effectively waived their right to challenge the Record on Appeal. Courts have consistently held that procedural rules governing appellate timelines are not mere formalities but serve to ensure the orderly and efficient administration of appeals.

B. Additional Arguments If the Court Finds the Motion Timely

Even if the Court determines that the motion was timely, the motion to strike should still be denied because the Record on Appeal was properly prepared and served in compliance with procedural rules.

The Appellant served the Record on Appeal and final brief to the Court on October 25, 2024. The later filing of the certificate of service on December 1, 2024, does not retroactively invalidate the timeliness of the original service. The purpose of the certificate of service is to provide proof of compliance, not to dictate the timeliness of the underlying service. The Respondent has suffered no prejudice from the certificate of service being filed after the Record on Appeal was served. The Respondent was aware of the Record on Appeal and final brief as of October 25, 2024, and had ample opportunity to review and respond within the required 30-day period. Their failure to file a timely brief or motion to strike demonstrates a lack of diligence, not any procedural defect on the part of the Appellant.

The Respondent's argument appears to hinge on the notion that the filing of the certificate of service on December 1, 2024, somehow tolled their deadlines. This is incorrect. The timeline for filing a response begins with the date of service, not the date of the certificate's filing. Courts should reject any attempt to conflate the two and excuse Respondent's untimely filing.

C. To the Extent the Court Allows the Motion, the Appellant Should Be Permitted to Amend the Record on Appeal

The summons and complaint from the civil case were explicitly referenced during the trial and considered by the court. During the questioning of Officer Beaudoin by Mr. Morris's counsel, the civil case was raised and discussed without objection from the Respondent. While the summons and complaint were not formally admitted into evidence, they were part of the trial discussion and

contributed to the trial court's consideration of mitigating factors. Moreover, the court may take judicial notice of these filings under Rule 201 of the South Carolina Rules of Evidence, which permits courts to notice adjudicative facts that are "not subject to reasonable dispute" because they are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Courts have consistently held that judicial notice is appropriate for facts that are not subject to reasonable dispute, including those derived from public records and other reliable sources. See, e.g., *Briscoe v. Ercole*, 565 F.3d 80, 83 (2d Cir. 2009) (taking judicial notice of the distance between two locations based on a map); *Denius v. Dunlap*, 330 F.3d 919, 926 (7th Cir. 2003) (taking judicial notice of the existence of public records maintained by the Department of Veterans Affairs). This principle logically extends to court filings, which are public records whose accuracy cannot reasonably be questioned.

If the Court determines that mere references to these filings in the trial transcript are insufficient to warrant their inclusion in the Record on Appeal, then the Appellant respectfully requests leave to amend the record to properly include the civil filings. Rule 210(c), SCACR, requires that the Record on Appeal contain all materials necessary for appellate review, and fairness dictates that the Appellant be permitted to supplement the record with these materials if necessary. The Respondent has relied on technical objections to challenge their inclusion, even though they were integral to trial discussions.

Moreover, denying the Appellant the opportunity to amend the record would unfairly disadvantage him by depriving the appellate court of key context regarding the victim's evolving position on sentencing. The civil case underscores significant questions about the trial court's consideration of mitigating factors, and excluding these filings would prevent a full and fair review of the trial court's decision-making. Therefore, should the Court find that the Record on Appeal requires amendment, the Appellant respectfully requests permission to supplement the record accordingly.

III. Conclusion

The Respondent's motion to strike is untimely, procedurally improper, and based on a misinterpretation of the rules governing service and filing. However, should the Court find the motion timely, the summons and complaint from the civil case should remain part of the Record on Appeal as they were raised and considered during the trial without objection. Furthermore, if the Court determines that the Record on Appeal must be amended to include the civil filings referenced in the proceedings, the Appellant respectfully requests the opportunity to do so. For these reasons, the Court should deny the Respondent's motion to strike.

Respectfully submitted,

/s/ Reagan Singletary
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Attorney for Appellant

February 13, 2025

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM DORCHESTER
COUNTY
Court of General Session**

Maite Murphy, Circuit Court

Judge

Appellate Case No. 2022-00412

Anthony B. Morris,

Appellant,

v.

The State,

Respondent.

PROOF OF SERVICE

I hereby certify that, on February 13, 2025, I caused a copy of the **Appellants' REPLY TO RESPONDENT'S MOTION TO STRIKE AND AMEND RECORD ON APPEAL** to be served on the following counsel of record, either via first class mail with postage prepaid, by hand delivery or by electronic mail at the address listed below:

Mark Farthing
South Carolina Attorney General's Office
1000 Assembly Street
Columbia, South Carolina 29201
Attorney for Respondent

Michael Spears
Attorney for Respondent
101 County Road S-18-61
St. George, South Carolina 29477

By: s/Reagan Singletary
Reagan Singletary, Esq
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Mar 03 2025

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
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Appellate Case No. 2022-00412

Anthony B. Morris,

Appellant,

v.

The State,

Respondent.

PROOF OF SERVICE

I hereby certify that, on March 3, 2025, I caused a copy of the **Appellants' MOTION TO STRIKE THE RESPONDENT'S IMPROPER FILING OF A REPLY TO RETURN TO MOTION TO STRIKE AND REQUIRE FILING OF AMENDED RECORD ON APPEAL** to be served on the following counsel of record, either via first class mail with postage prepaid, by hand delivery or by electronic mail at the address listed below:

Mark Farthing
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Michael Spears
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