

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr.

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Circuit Court Case No. 2024-CP-36-00087  
Appellate Case No. 2024-001360

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**RECEIVED**  
SEP 05 2025  
SC Court of Appeals

Abdellah El Farissi, Appellant,

V.

Newberry College, Respondent.

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**APPELLANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S  
MOTION TO STRIKE**

Appellant Abdallah El Farissi (“Appellant”), appearing pro se, respectfully opposes Respondent’s Motion to Strike Appellant’s Motion Reply Brief. For the reasons below, the Respondent’s Motion should be denied; in the alternative, the Court should exercise its discretion under SCACR 240(b) to accept Appellant’s submission as a limited supplemental brief addressing issues newly emphasized in Respondent’s Final Brief.

### I. Pro Se Leniency and the Court’s Discretion

South Carolina courts liberally construe pro se filings and do not exalt form over substance. *Burnside v. Sanders*, 281 S.C. 453, 315 S.E.2d 129 (Ct. App. 1984); see also *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (pro se pleadings to be held to less stringent standards). This honorable Court likewise retains discretion to permit supplemental briefing where it aids resolution of the issues. SCACR 240(b) (“the appellate court may, in its discretion, permit or require supplemental briefs”).

Appellant filed the Motion Reply Brief in good faith to address arguments and omissions that Respondent newly emphasized in its Final Brief and that were not squarely presented in its Initial Brief.

### II. Respondent’s Final Brief Raised New Issues and Omissions Warranting a Responsive Filing

Contrary to Respondent’s characterization, Appellant’s Motion Reply Brief was not an attempt to “reopen” briefing but a targeted response to new or sharpened positions in Respondent’s Final Brief. Three examples illustrate this:

#### (1) Preservation/Waiver Was Elevated as a Threshold Disposition for the First Time.

In its Final Brief, Respondent led with a comprehensive waiver/preservation attack, asserting Appellant raised “new” Fourth Amendment, failure-to-promote, and judicial-bias theories only on appeal and that these issues are therefore unreviewable. That framing was not squarely presented in the Initial Brief, which focused primarily on Rule 12(b)(6) and purported pleading defects. Appellant’s Motion Reply Brief was necessary to clarify that (a) the core claim has consistently sounded in unlawful interception/use/disclosure; (b) pro se litigants receive leniency in preservation and framing (*Burnside*; *Erickson*); and (c) the bias concern is apparent on the face of the transcript, even if not couched in formal terminology at the hearing.

#### (2) The One-Party-Consent Rule Was Recast to Collapse Downstream Liability - Ignoring § 2511(2)(d).

Respondent’s Final Brief reasserted that because the student-athlete was a party to the conversation, the recording, and thus Respondent’s later use/disclosure could not be unlawful. That presentation omits the statute’s crucial exception in 18 U.S.C. § 2511(2)(d): one-party consent does not apply where the interception is made for the purpose of committing a criminal or tortious act. Appellant alleged the recording was orchestrated at the head coach’s request to engineer Appellant’s termination, a tortious purpose that, if proven, vitiates the consent safe harbor and

triggers potential liability for use/disclosure under § 2511(1)(c)–(d). This clarification was essential and had not been squarely addressed in Respondent’s Initial Brief.

### (3) A New, More Aggressive Attack on Expectation of Privacy in a Private Vehicle.

The Final Brief for the first time labels Appellant’s “in my car” allegation “wildly insufficient” to plead an objectively reasonable expectation of privacy, invoking *U.S. v. Castellanos*, 716 F.3d 828 (4th Cir. 2013). That argument was not squarely pressed in the Initial Brief. Appellant’s Motion Reply Brief responded that “oral communication” under 18 U.S.C. § 2510(2) turns on whether the speaker exhibited an expectation of non-interception under circumstances justifying such expectation, a fact-intensive inquiry. A private conversation inside one’s vehicle is not categorically insufficient as a matter of law, and at the Rule 12(b)(6) stage, all reasonable inferences must favor the plaintiff. The trial court resolved that fact question against Appellant on the pleadings, which is improper. Because Respondent’s Final Brief newly elevated preservation as a dispositive screen, collapsed the wiretap analysis by omitting the § 2511(2)(d) tortious-purpose exception, and advanced a sharpened privacy argument about conversations in a car, Appellant’s Motion Reply Brief was a proper, targeted response to ensure that this Honorable Court has a complete and accurate legal framework.

### III. No Prejudice; Striking Would Elevate Form Over Substance

Allowing the Motion Reply Brief to remain causes no prejudice to Respondent, which has already filed both Initial and Final Briefs. By contrast, striking Appellant’s targeted response would withhold directly responsive authorities and analysis the Final Brief newly invited, particularly on preservation and the § 2511(2)(d) exception, thereby elevating form over substance in a pro se appeal.

### IV. Alternative Relief Under SCACR 240(b)

Even if this Honorable Court were to conclude that Appellant’s filing does not fit neatly within SCACR 208/211, Appellant respectfully requests that this Honorable Court exercise its discretion under SCACR 240(b) to accept the Motion Reply Brief as a supplemental brief limited to: (1) the preservation/waiver framing raised and emphasized in Respondent’s Final Brief; (2) the 18 U.S.C. § 2511(2)(d) tortious-purpose exception and its effect on § 2511(1)(c),(d); and (3) the fact-sensitive nature of a reasonable expectation of privacy in a private vehicle at the 12(b)(6) stage.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Honorable Court deny Respondent's Motion to Strike and consider Appellant's Motion Reply Brief. In the alternative, Appellant requests the Court accept the filing as a limited supplemental brief under SCACR 240(b).

Respectfully submitted,

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PROOF OF SERVICE

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I certify that I have served the Appellant's Response in Opposition to Respondent's Motion to Strike on Newberry College by serving a copy of it to their attorney of record, Sheila M. Abron, via Electronic Mail and U.S. Mail at her office located at 1320 Main St. Suite 750, Columbia, South Carolina, 29201.

September 5, 2025

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