

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Perry H. Gravely, Circuit Court Judge

C.A. No. 2024-CP-23-04179
APPELLATE CASE No. 2025-002531

Khalil Ibn Thorpe Appellant,

v.

The State Respondent.

**RESPONDENT'S MOTION TO STRIKE, MOTION TO
CORRECT RECORD ON APPEAL, AND MOTION FOR
EXTENSION OF TIME TO FILE FINAL BRIEF**

Pursuant to Rule 210, SCACR, Respondent moves this court for an Order striking matters not presented to the Circuit Court from Appellant's Record on Appeal. Respondent further moves this Court for an Order requiring Appellant to correct the Record on Appeal by including the entirety of the matters listed in Respondent's Designation of Matter pursuant to Rules 210, and 240, SCACR. Respondent states the grounds of the motion as follows:

Appellant's improper filing and failure to include all designated matters in the Record on Appeal are deficiencies that must be cured. Appellant filed the Record on Appeal, Proof of Service, Motion to File Record on Appeal Out of Time, Final Brief, and Final Reply Brief on August 19, 2026. Appellant's Record on Appeal includes an

affidavit signed by Appellant dated May 21, 2026, and fails to include the complete Magistrate Return identified in Respondent's Designation of Matter.

ARGUMENT

This Court should strike Appellant's affidavit from the Record on Appeal because it was not in the record reviewed by the lower court. Pursuant to Rule 210, SCACR, "[t]he 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." Rule 210, SCACR. Appellate courts are unable to accept new evidence. See, e.g., *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) ("On review, we may not make our own findings of fact."). While appellate courts will occasionally take judicial notice of certain facts, such judicial notice "should be limited to matters which are indisputable." *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984). The affidavit included in the Record on Appeal was signed by Appellant on May 21, 2026, well after he initiated this appeal. Appellant's affidavit constitutes new evidence as it was not in existence at the time of the lower court's review. Therefore, Appellant's affidavit should be stricken from the Record on Appeal as it was not presented to the lower court or tribunal. Rule 210(c), SCACR.

The Record on Appeal must be corrected to include the complete Magistrate Return submitted to the Circuit Court. Respondent's Designation of Matter filed May 7, 2026, included the initial Magistrate Return filed on August 30, 2024, in C/A No.

2024-CP-23-03579. The Record on Appeal submitted by Appellant includes only the first four (4) pages of the Magistrate Return. The complete Magistrate Return is 77 pages long and was docketed as single entry by the Circuit Court. Appellant failed to include 77 pages of the Magistrate's submission, instead impermissibly truncating the Court's filing. Respondent's Initial Brief cites various pages within the Magistrate Return, beyond the four pages included in the Record on Appeal; therefore, Appellant is aware that Respondent's Designation of Matter encompasses the complete Return, not merely a portion thereof. Appellant's failure to include the entire Magistrate Return makes it impossible for Respondent to complete its Final Brief in accordance with Rule 211, SCACR.

Additionally, Appellant failed to include an Index in the Record on Appeal and failed to arrange the documents in accordance with Rule 210(c), SCACR. The Circuit Court transcript is incorrectly placed between a portion of the Magistrate Return and Magistrate's Supplemental Return.

Respondent requests that this Court strike Appellant's Affidavit from the Record on Appeal and order Appellant to correct the Record on Appeal.

As a result of the deficient record filed by Appellant, Respondent cannot presently file a Final Brief in compliance with Rule 211, SCACR, as the Record does not contain the complete Magistrate Return, and Respondent therefore cannot provide complete references to the Record. Respondent respectfully requests that the Court allow Respondent twenty (20) days after a corrected and complete Record on Appeal is filed to submit its final brief.

CONCLUSION

Based on the arguments contained herein, this Court should grant the relief requested in Respondent's Motion to protect the Record before this Court and allow briefing to continue only after a corrected and complete Record on Appeal is filed.

Respectfully submitted,

s/ Campbell Plumblee
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Greenville, South Carolina
September 4, 2026

Attorney for the Respondent

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SC Court of Appeals

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Proof of Service

Pursuant to Rule 262(c)(2), SCACR, the undersigned counsel hereby certifies that I have served a copy of Respondent's Motion to Correct the Record on Appeal and Extension of Time to File Final Brief on Khalil Thorpe at 52 Gantt Drive, Greenville, S.C., 29605 (see attached sent letter).

Respectfully submitted,

/s/ Campbell Plumblee
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September 4, 2026
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Attorney for the Respondent