

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Greenville County  
R. Keith Kelly, Circuit Court Judge  
Appellate Case No. 2015-000517

RECEIVED  
APR 14 2016  
SC Court of Appeals

THE STATE,

Respondent,

v.

COURTNEY RAY MITCHELL,

Appellant.

**MOTION TO STRIKE APPELLANT'S  
DESIGNATION OF MATTER FOR  
FAILURE TO COMPLY WITH  
RULE 210(c), SCACR**

Respondent (the State) now moves for this Court to strike a portion of Appellant's designation of matter. Appellant proceeded to trial before the Honorable R. Keith Kelly on February 12, 2015, and now appeals from his conviction and sentence. In Appellant's designation of matter, Appellant designates fourteen items.

Only Items 3, 10, and 12 were actual exhibits that became part of the record during the trial. (Defendant's Exhibit #6 and #7 and State's Exhibit #1). The State has no objection to those items being designated for inclusion in the Record on Appeal. Additionally, the State of course has no objection to the trial transcript (Item 14) being designated. However, the rest of the items were never mentioned during the trial or presented to the trial court. Items 1, 2, 4, 5, 11, and 13

(Incident Report and Supplemental Incident Report prepared in connection with June 21, 2013 incident; Breach of Peace Warrant; Statements given by Velma (Gina) Jones; Intimidation of a Witness Warrant; Motion to Vacate Orders of Protection Transcript (AKA Mot. to Vacate Rest. Order Tr.); and Entire Motion to Stay Transcript) were cited to in Appellant's brief; however, simply because Appellant cited to these items in his brief does not make them proper for inclusion. See Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal"). Items 6, 7, 8, and 9 (Subpoenas issued by defense attorney requesting UPS employee materials; Order quashing subpoenas; Cover letters from assistant solicitor dated January 16, 2015 and February 10, 2015) were not cited to in Appellant's brief nor were they mentioned during trial. It appears that many of the items included in his designation relate to other matters not before this Court in this appeal, namely various civil matters involving restraining orders and other issues with UPS.

Initially, items not presented to Judge Kelly during the trial of this case are improper for inclusion in the instant case. Rule 210(c), SCACR. Furthermore, it seems items not cited or mentioned in Appellant's brief cannot possibly be relevant to this appeal and, thus, should be stricken from Appellant's designation of matter. Rule 209(b), SCACR ("A party shall not include any matter in his Designation which is not relevant to the appeal.").

While many of these items appear to be irrelevant to this appeal, the State does not see any harm from allowing them into the Record on Appeal and leaves any determination regarding Items 1, 2, 5, 6, 7, 8, 9, 11, and 13 in the sound discretion of this Court. However, the State moves to strike Item 4, Statements given by Velma (Gina) Jones, from Appellant's designation of matter and any references to such matter from Appellant's brief because her trial testimony speaks for

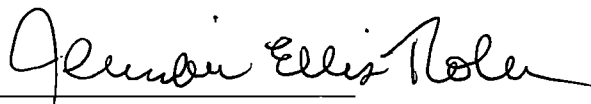
itself. Jones's testimony is in the trial transcript and any references to other statements made by her are unnecessary, confusing, and were not admitted during trial. The State also moves to hold all timelines in abeyance until this Court rules on the State's motion.

WHEREFORE, Respondent prays that this Court strike Appellant's designation of matter and any references in the initial brief to those matters, and require Appellant to submit a new designation of matter in compliance with Rules 209 and 210, SCACR, and further requests that all filing deadlines be held in abeyance pending resolution of this motion; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

JENNIFER ELLIS ROBERTS  
Assistant Attorney General  
Bar # 79818

BY:   
JENNIFER ELLIS ROBERTS

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ATTORNEYS FOR RESPONDENT

April 14, 2016

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**PROOF OF SERVICE**

I, Angela Bennett, certify that I have served the Motion to Strike Appellant's Designation of Matter for Failure to Comply with Rule 210(c), SCACR on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney Donald L. Smith, Esquire, 122 N. Main Street, Anderson, South Carolina 29621.

I further certify that all parties required by Rule to be served have been served.

This 14<sup>th</sup> day of April, 2016.

  
ANGELA BENNETT  
Administrative Assistant

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727



ALAN WILSON  
ATTORNEY GENERAL

April 14, 2016

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SC Court of Appeals

The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

Re: The State v. Courtney Ray Mitchell  
Appellate Case No: 2015-000517

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Motion to Strike Appellant's Designation of Matter for Failure to Comply with Rule 210(c), SCACR along with proof of service in the above-referenced case.

Sincerely,

Jennifer Ellis Roberts  
Assistant Attorney General  
S.C. Bar No: 79818

JER/ab  
Enclosures

cc: Donald L. Smith, Esquire  
Ms. Trisha Allen