

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**  
AUG 29 2016  
SC Court of Appeals

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

THE STATE,

Respondent,

v.

COURTNEY RAY MITCHELL,

Appellant.

**RETURN TO MOTION TO FILE OUT OF TIME AND MOTION FOR AN EXTENSION  
OF TIME TO FILE AN AMENDED DESIGNATION OF MATTER AND INITIAL  
BRIEF**

Respondent (the State) respectfully requests that this Court accept its response and submits the following in opposition to Appellant's August 23, 2016 "Motion to File Out of Time and Motion for an Extension of Time to File an Amended Designation of Matter and Initial Brief."

On August 12, 2015, Appellant filed an Initial Brief of Appellant and Designation of Matter. On April 14, 2016, after drafting its Initial Brief of Respondent, the State filed a Motion to Strike Appellant's Designation of Matter for Failure to Comply with Rule 210(c), SCACR. Subsequently, on June 7, 2016, ten months after submitting his original Initial Brief, Appellant filed an Amended Initial Brief and Designation of Matter and a Motion for an Extension of Time to File. The State responded to Appellant's Amended Brief and Designation of Matter with a

letter to this Court dated June 22, 2016, confirming receipt of same and asking whether a response was required where the Rules do not contemplate a party submitting a substantively amended brief.

On August 11, 2016, this Court filed an Order in the matter, denying the State's April 14, 2016 Motion to Strike, thereby presumably accepting Appellant's original Initial Brief and Designation of Matter as the operative pleadings. However, on August 17, 2016, this Court sent a letter to Appellant confirming it had received his Amended Initial Brief and requesting of him: "If you would like the Court to accept your amended appellant's initial brief, you must make a motion asking us to do so within ten days of the date of this letter. Upon receipt of your motion, we will consider whether or not we will accept your brief." Whereupon, within ten days Appellant filed a Motion to File Out of Time and Motion for an Extension of Time to File an Amended Designation of Matter and Initial Brief. To the extent Appellant is now asking that this Court accept the Amended Initial Brief he filed on June 7, 2016, the State opposes this Court's acceptance of that brief.

Appellant's Initial Brief filed on August 12, 2015, and Appellant's Amended Initial Brief filed on June 7, 2016, are significantly different in substance, authorities cited, and designation of matter. Although the arguments are framed in much the same way they were in Appellant's original Initial Brief, the body of each argument section contains omitted parts, additional parts, and significantly modified parts. Appellant has effectively filed a new Initial Brief almost a year after the time for filing an Initial Brief would have expired. Not only is this counter to the spirit and letter of the Appellate Court Rules, it has also had an impact on the State.

Prior to filing its Motion to Strike Appellant's Designation of Matter, the State researched and wrote its Initial Brief in response to Appellant's Initial Brief. To now be required to respond

to Appellant's rewritten Amended Initial Brief, the State would have to begin anew. Furthermore, Appellant had the advantage of writing his Amended Initial Brief with the knowledge of the items he designated but the State opposed, and he subsequently changed parts of the Initial Brief to address its shortcomings. Quite candidly, Appellant also had the opportunity to soften some of the harsh language he originally wrote about the victim. The State opposes allowing Appellant the advantage of rewriting his brief upon reflection and with the knowledge of the State's challenges to his Designation of Matter. Other Appellants are not given this opportunity and are bound by the contents of their initial briefs. See Rule 211(b)(2), SCACR (specifying that in final briefs, "[t]he party may correct obvious typographical errors and misspellings which were contained in the initial brief [but n]o other changes may be made."). This is particularly appropriate where this Court denied the State's previous Motion to Strike and approved Appellant's original Initial Brief and the matters he designated in association with that Initial Brief.

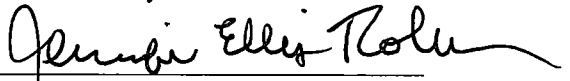
Finally, the State would note that Appellant's Amended Designation of Matter is almost entirely different from what was designated in Appellant's original Initial Brief and Designation of Matter, which was the subject of the Motion to Strike and this Court's Order denying that motion. Thus, if this Court decides to accept Appellant's Amended Initial Brief, the State asks for an opportunity to then respond to his Amended Designation of Matter.

WHEREFORE, the State asks this Court to decline to accept Appellant's Amended Initial Brief and Designation of Matter and instead to accept Appellant's Initial Brief and Designation of Matter filed on August 12, 2015.

Respectfully submitted,

ALAN WILSON  
Attorney General

JENNIFER ELLIS ROBERTS  
Assistant Attorney General

BY:   
Jennifer Ellis Roberts  
S.C. Bar No: 79818

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ATTORNEYS FOR APPELLANT

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**PROOF OF SERVICE**

I, Angela Bennett, certify that I have served the Return to Motion to File Out of Time and Motion for Extension of Time to File and an Amended Designation of Matter and Initial Brief 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 29<sup>th</sup> day of August, 2016.

  
\_\_\_\_\_  
ANGELA BENNETT  
Administrative Assistant

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



ALAN WILSON  
ATTORNEY GENERAL

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AUG 29 2016

SC Court of Appeals

August 29, 2016

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 Return to Motion to File Out of Time and Motion for Extension of Time to File and an Amended Designation of Matter and Initial Brief 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

