

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2017-001930

Norris Earl White Jr.,

Appellant,

v.

City of North Charleston

Respondent.

**APPELLANT'S RETURN TO RESPONDENT'S
MOTION TO DISMISS OR TO CORRECT RECORD ON APPEAL**

Milton Demetrios Stratos II
SC Bar No.: 102108
Joye Law Firm, L.L.P.
5861 Rivers Avenue (29406)
P.O. Box 62888
North Charleston, SC 29419-2888
(843) 554-3100

Attorney for Appellant
Norris Earl White Jr.

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Norris Earl White Jr. submits this return to Respondent's motion to dismiss or to correct the record on appeal pursuant to Rule 240, SCACR.

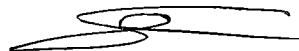
Appellant included in the Record on Appeal all of Respondent's motions, affidavits and memorandum, including exhibits, which were presented to the lower court. In doing so, Appellant assumed that all of Respondent's designated matters, including the Respondent's designated matter no. 6, were presented to the lower court and therefore included in the Record on Appeal. However, Respondent's designated matter no. 6, was not presented to the lower court, and for this reason it was mistakenly omitted from the Record on Appeal. Had Appellant recognized that Respondent deviated from Rule 209(b) by designated evidence not presented to the lower court Appellant would have timely moved to strike the same before submitting the Record on Appeal.

Counsel for Appellant did not intentionally omit any of Respondent's designated matters. Counsel for Appellant made this clear to Counsel for Respondent by email dated March 14, 2018. Stratos II, Milt D. "Re: White." Message to Robin Jackson. March 14, 2018, Email (Exhibit 1).

In addition, once this matter was brought to the attention of Counsel for Appellant he requested Counsel for Respondent's cooperation to identify when Respondent's designated matter no. 6 was presented to the lower court so that Counsel for Appellant could properly supplement the Record on Appeal while also satisfying South Carolina Appellate Court Rule 210. Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal."). Counsel for Respondent replied that designated matter no. 6 was not submitted to the lower court. Jackson, Robin. "Re: White." Message to Milt Stratos II. March 14, 2018, Email (Exhibit 2). It is on this basis, and Appellant's desire to observe SCACR, that Appellant has not supplemented the Record on Appeal to include the subject of this motion.

Therefore, Appellant respectfully requests that this court deny Respondent's motion on the basis Respondent's designated matter no. 6 is evidence not properly presented to the lower court, irrelevant to this appeal, and inconsistent with Rule 209 and Rule 210, SCACR. In the alternative, to the extent the court holds that Respondent's designated matter no. 6 is proper evidence for the Record on Appeal, Appellant respectfully requests the opportunity to timely supplement the Record on Appeal to include Respondent's designated matter no. 6.

Respectfully submitted,



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Attorney for Appellant
Norris Earl White Jr.

Dated this 28 day of March, 2017.

EXHIBIT 1

From: Milt Stratos [<mailto:mstratos@joyelawfirm.com>]

Sent: Wednesday, March 14, 2018 9:59 AM

To: Robin Jackson <robin@sennlegal.com>

Subject: RE: White

Robin,

I'm swamped as well. So that you know I didn't intentionally leave anything out. I assumed it was in the exhibits attached to your memos. Once you brought it up I looked back and couldn't find where you submitted it to the lower court. I'm not trying to be obstructive. I'm just trying to follow the rules. As long as the citation was submitted to the lower court I have no issue supplementing the record with it. Just have your assistant point out when the citation was submitted to the lower court, and I'll supplement the record with it next week.

Milt

EXHIBIT 2

From: Robin Jackson
To: [Milt Stratos](#)
Subject: RE: White
Date: Wednesday, March 14, 2018 11:39:10 AM
Attachments: [image006.png](#)
[image001.png](#)

Milt,

I know the front of the ticket was referenced during arguments, and you put in the back of the ticket, so I think I am entitled to have the front with it. Also, the courts have ruled that I can bring in addition information as a respondent. Therefore, I take the position that it needs to be included whether or not it was an actual exhibit at summary judgment.

Thank you.



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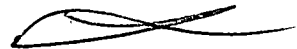
Respondent.

PROOF OF SERVICE

I certify that I have served Norris White Jr.'s **Return to Appellant's Motion** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, on March 28, 2018, in an envelope addressed as follows:

Other Counsel of Record:
Robin Lilley Jackson, Esq.
PO Box 12279
Charleston, SC 29422
(843) 556-4045
Attorney for Respondent
City of North Charleston

Dated this 28 day of March, 2017.



Lindsey Merreighn

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Charleston Myrtle Beach Clinton Columbia

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Milt Stratos
Email: mstratos@joyelawfirm.com

February 28, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629 (29211)
1015 Sumter Street
Columbia, S.C. 29201

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RE: Norris Earl White Jr. v. City of North Charleston
Appellate Case No. 2017-001930

Dear Ms. Kitchings:

In association to the above-referenced matter, please find enclosed for filing one (1) original and seven (7) copies of Appellant's Return to Respondent's Motion to Dismiss or to Correct the Record on Appeal.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me at your convenience.

With best wishes, I am

Very truly yours,

Milt Stratos II

Mds/mds

Encl.: a/s

cc: All Counsel of Record (via U.S. Mail)



5861 Rivers Avenue
North Charleston, SC 29406

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
PO Box 11629 (29211)
1015 Sumter Street
Columbia, SC 29201



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