

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County
Michael G. Nettles, Circuit Court Judge

RECEIVED
SEP 28 2018
SC Court of Appeals

THE STATE,

Respondent,

vs.

MICHAEL JAMES DINKINS,

Appellant.

Appellate Case No. 2017-002360

**MOTION TO STRIKE APPELLANT'S
DESIGNATION OF MATTER AND BRIEF
FOR FAILURE TO COMPLY WITH
RULE 209(b) AND RULE 210(c), SCACR**

Respondent now moves for this Court to strike Appellant's designation of matter and initial brief for presenting and arguing matters outside the record. Respondent further moves to strike matter that is irrelevant to the appeal and harassing to the minor victim.

I.

Appellant appeals his conviction for criminal sexual conduct in the third degree and two counts of assault and battery in the second degree. Appellant designated two items that were not entered into evidence at trial: (1) a DuRant Center report dated January 14, 2016; and (2) the Clarendon County Sheriff's Department Incident Report dated January 8, 2016. These items

were not entered into evidence at trial. Further, based on Respondent's review, the transcript does not reference the items being presented to the trial court. Both items were designated by Appellant and cited in Appellant's initial brief.

Because these designated items and the references to the items in the brief all are matter not presented to the trial court, they are not proper for inclusion in the record. Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal"); Rule 208 (b)(4), SCACR ("The brief shall contain references to the transcript, pleadings, orders exhibits, or other materials which may be properly included in the Record on Appeal.").

Since the initial brief and the designation of matter are not in compliance with the Appellate Court Rules, the initial brief and designation of matter should be struck, and Appellant should be required to amend both accordingly.

II.

Appellant also designates his memorandum in support of a psychological evaluation of the victim and the attachments to the memorandum (Item 4). The material was presented to the trial court and the trial court ordered the evaluation which was presented to the trial court. However, Appellant did not move to prevent the victim from testifying or challenge any ruling of the court in regards to the victim's competency to testify. The issues raised on appeal challenges a jury instruction, the trial court's denial of a directed verdict motion, and the admission of prior bad acts. Appellant does not challenge the determination that the State established the occurrence of the prior bad acts by clear and convincing evidence. The motion and its attachments were not entered into evidence and the evaluation itself is only briefly referenced in regards to qualifying the minor

victim to testify at trial. Accordingly, the memorandum and its attachments are irrelevant to the appeal.

Under Rule 209(b) SCACR, “A party shall not include any matter in his Designation which is not relevant to the appeal.” Because the matter is irrelevant and harassing, Respondent respectfully requests that the memorandum and attachments be struck from the record and reference be struck from appellant’s initial brief. In the alternative, Respondent would request the record and briefs be sealed for the sake of the minor victim’s privacy.

III.

WHEREFORE, Respondent prays that this Court strike Appellant’s Initial Brief and Designation of Matter, and require Appellant to submit a new Designation of Matter in compliance with Rules 209 and 210, SCACR, and amend the Initial Brief of Appellant accordingly. Respondent further requests for such other and further relief as the Court may deem just and proper.

[Signature block follows on next page]

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 68571

BY: _____


DAVID SPENCER

Office of the Attorney General
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ATTORNEYS FOR RESPONDENT

September 28, 2018

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The Honorable Michael G. Nettles, Circuit Court Judge

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PROOF OF SERVICE

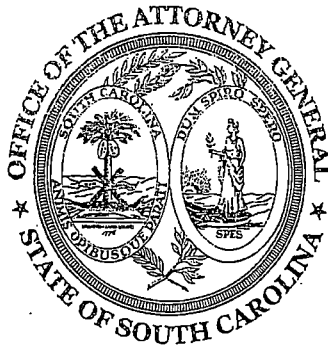
I, Anne Mueller, certify that I have served the within Motion to Strike Appellant's Designation of Matter and Brief for Failure to Comply with Rule 209(b) and Rule 210(c), SCACR on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Steven S. McKenzie, Esquire, Coffey & McKenzie, PA, 2 N. Brooks Street, Manning, SC 29102.

I further certify that all parties required by Rule to be served have been served.
This 28th day of September, 2018.



Anne A. Mueller
Legal Assistant for the Respondent

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



ALAN WILSON
ATTORNEY GENERAL

September 28, 2018

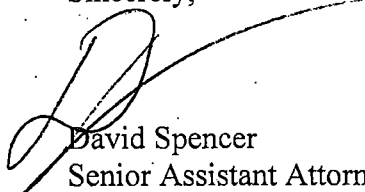
Steven S. McKenzie, Esquire
Coffey & McKenzie, PA
2 N. Brooks Street
Manning, SC 29102

RE: The State v. Michael James Dinkins
Appellate Case No: 2017-002360

Dear Mr. McKenzie:

Enclosed please find two copies of the State's Motion to Strike Appellant's Designation of Matter and Brief for Failure to Comply with Rule 209(b) and Rule 210(c), SCACR in the above-referenced case.

Sincerely,



David Spencer
Senior Assistant Attorney General
S.C. Bar No: 68571

DS/aam
Enclosures

~~cc: Jenny A. Kitchings (with original and 6 copies)~~
Victim Advocacy Division

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