

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**RECEIVED**  
**Jul 31 2020**  
SC Court of Appeals

Appeal from Dillon County  
Honorable Roger E. Henderson, Circuit Court Judge  
Appellate Case Tracking No. 2019-001303

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The State,

Respondent,

vs.

Tyreek Dashawn Hayes,

Appellant.

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**MOTION TO STRIKE PORTIONS OF INITIAL BRIEF OF APPELLANT  
AND REQUIRE AMENDED INITIAL BRIEF OF APPELLANT**

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Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

Appellant served and filed his Initial Brief of Appellant on July 27, 2020. After review of the Brief, it appears to contain inappropriate commentary and material in the procedural Statement of the Case. The State asks that paragraph 2 of Appellant's Statement of the Case be struck, and Appellant be required to serve and file an Amended Initial Brief of Appellant with only relevant procedural information included in the Statement of the Case.

II.

Pursuant to Rule 208(b)(1)(C) of the South Carolina Appellate Court Rules: "The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal." The issue presented by Appellant in his brief relates to admission of hearsay. (App. Br. 1). However, the second paragraph of his Statement of the Case quotes

multiple portions of the Court's jury instructions regarding specific intent. (App. Br. 2). This issue is not before the Court and, therefore, commentary on the Court's jury instructions is not part of a "concise history of the proceedings, insofar as **necessary to an understanding of the appeal.**" Rule 208(b)(1)(C), SCACR (emphasis added).

Additionally, the Rule provides: "The statement shall not contain contested matters . . . ." A reading of the second paragraph of the Statement of the Case also shows that it is discussing a matter which would likely be contested by the State and uses language which goes beyond the limited procedural statement allowable in the section of the brief. The procedural Statement of the Case states: "However, his charge was confusing, at best." This language may be appropriate for an argument section, but not for a procedural statement of the case. Finally, the section contains a footnote, which clearly seems to be designed to either influence this Court's opinion in this case or to highlight an issue which is not preserved but might be worth raising in a subsequent proceeding. Neither basis is appropriate for what is supposed to be a concise procedural history of the case. The State submits the entirety of the second paragraph of the Statement of the Case should be struck from the Initial Brief of Appellant, and Appellant should be required to submit an Amended Initial Brief of Appellant without reference to unrelated jury instructions or commentary on the trial court's jury charges when they are not at issue and not even preserved for review on appeal.

### III.

The State asks this Court to strike Appellant's Initial Brief of Appellant, specifically the second paragraph of the Statement of the Case in which he discusses unrelated jury instructions provided by the trial court. This Court should require an Amended Initial Brief of Appellant with no references to the jury instructions and a procedural Statement of the Case which

complies with Rule 208(b)(1)(C) and its requirement to provide a “concise history of the proceedings, insofar as necessary to an understanding of the appeal.”

WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion, strike Appellant’s Initial Brief of Appellant; require Appellant to serve and file an Amended Initial Brief of Appellant eliminating the second paragraph of Appellant’s procedural Statement of the Case and allow only a proper, concise procedural history; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Senior Assistant Deputy Attorney General

BY:   
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ATTORNEYS FOR RESPONDENT

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**PROOF OF SERVICE**

I, Caroline Collins, certify that I have served the Motion to Strike on Appellant by email to Susan B. Hackett, Esquire, at the email address provided by AIS.

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

This 31<sup>st</sup> day of July, 2020.



CAROLINE COLLINS  
Administrative Coordinator  
Office of Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3727

**Caroline Collins**

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**From:** Caroline Collins  
**Sent:** Friday, July 31, 2020 12:30 PM  
**To:** 'Hackett, Susan'  
**Cc:** Kasperski, Katriel; William Blitch  
**Subject:** The State v. Tyreek Dashawn Hayes (2019-001303)  
**Attachments:** HAYES Tyreek - Motion to Strike Portions of IBOA and Required Amended IBOA - 2019-001303 (02340253xD2C78).PDF

Good Afternoon Ms. Hackett,

Attached please find a copy of a Motion to Strike Portions of Initial Brief of Appellant and Require Amended Initial Brief of Appellant in The State v. Tyreek Dashawn Hayes (2019-001303). This document will be submitted today to the Court of Appeals through the AIS One Drive system.

If you will, please reply to confirm receipt of this email.

Thank you!

*Caroline Collins*

Administrative Coordinator  
South Carolina Attorney General's Office  
P: (803) 734-3723

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