

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Aug 04 2020
SC Court of Appeals

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

The State,

Respondent,

vs.

Tyreek Dashawn Hayes,

Appellant.

**REPLY TO APPELLANT'S RETURN TO
STATE'S MOTION TO STRIKE**

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

I.

Appellant has raised several grounds for keeping the unnecessary and inappropriate commentary found in paragraph two of his Statement of the Case. None of the stated grounds support allowing the second paragraph to remain in the brief.

First, he asserts it should be kept because the State did not move to strike other portions of the Statement of the Case or the Designation of Matter. The State did not move to strike the other aspects of the Statement of the Case because they were not as glaringly inappropriate as the second paragraph. Appellant did not add his own commentary to what is supposed to be an entirely procedural statement. However, if this Court finds the additional information regarding the need for an Allen charge is unnecessary and inappropriate, the State certainly believes it is proper to strike it from the Statement of the Case in addition to the second paragraph.

Next, Appellant maintains the State failed to strike the jury charges from the Designation of Matter, so it must be appropriate for the Statement of the Case. Whether something is at all relevant to the issues presented or can be addressed as a subject of an argument and, therefore, relevant to the Designation of Matter is an entirely different question than whether something is appropriate for the very limited purpose of the Statement of the Case. It is a classic case of comparing apples to oranges. Essentially, Appellant is saying even though the apples are rotten and need to be discarded, we should not unless we also discard the oranges because they too are a fruit. Whether material is allowable under Rule 209 is inapplicable to what is allowable under Rule 208(b)(1)(C). However, again, if the Court believes it is inappropriate to include the jury charges in the Designation of Matter, the State does not oppose striking those pages.

Accepting Appellant's logic, why would he not recount all of the jury charges in the Statement of the Case? Why only include jury charges related to defining the required intent for attempted murder—again something not raised on appeal and acknowledged not to even be preserved for consideration on appeal? The jury charge on kidnapping is certainly just as relevant to the appeal as the jury charge related to attempted murder. The jury charge on reasonable doubt and how the jury is to consider evidence—especially in light of the fact the argument on appeal relates to the improper admission of evidence—are more relevant to how the case proceeded and to an understanding of *the appeal* and *the issue* on appeal than are any charges related to the individual offenses Appellant faced. A specific recounting of jury charges only applicable to one portion of Appellant's case, when nothing about those charges appears to be an issue on appeal, violates the requirement that the Statement of the Case only include a procedural recitation of what is "necessary to an understanding of the appeal."

Finally, Appellant seems to argue the Court needs to be made aware of "the judge's erroneous instruction regarding attempted murder" because otherwise the Court "would

determine the jury believed Appellant had a specific intent to kill based on the complaining witness's testimony." The mere fact Appellant refers to the instructions as "erroneous" shows that the paragraph contains contested matter. The State submits, as it did before, a determination of whether the jury instructions are "confusing" or "erroneous" depends on many factors, including a consideration of the entirety of the jury instructions. Including mere snippets of the instructions, and labeling them "confusing" or "erroneous," fails to satisfy the requirement that the Statement of the Case not include any contested matter. Additionally, inclusion of the charges to try to ascertain the jury's thought process and how they arrived at a conclusion of guilty on multiple charges is not a proper basis for inclusion in the procedural Statement of the Case. The fact Appellant has to justify inclusion by arguing this Court needs to know these instructions were given in order to be able to improperly speculate about the jury's determination demonstrates that they are contested matter, and as the State maintains, the jury instructions are entirely irrelevant to any issue on appeal and do not in any way exemplify the importance of credibility or the jury's thought process in convicting Appellant of four charges. Instead, Appellant is merely trying to highlight an issue that was not preserved at trial for possible consideration in a future proceeding and is now trying to justify its inclusion in what is supposed to be a purely procedural Statement of the Case.

II.

The State again 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. If this Court believes the portions of the Statement of the Case referencing the Allen charge are in error, then the State asks that they be struck as well. 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, at a minimum, the second paragraph of Appellant’s procedural Statement of the Case; allow only a proper, concise procedural history; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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BY:



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ATTORNEYS FOR RESPONDENT

August 4, 2020

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PROOF OF SERVICE

I, Caroline Collins, certify that I have served the Reply 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 4th day of August, 2020.



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Caroline Collins

From: Caroline Collins
Sent: Tuesday, August 4, 2020 12:42 PM
To: 'Hackett, Susan'
Cc: Kasperski, Katriel; William Blitch
Subject: The State v. Tyreek Dashawn Hayes (2019-001303)
Attachments: HAYES Tyreek - Reply to Appellant's Return to State's Motion to Strike - 2019-001303 (02343444xD2C78).PDF

Good Afternoon Ms. Hackett,

Attached please find a copy of the Reply to Appellant's Return to State's Motion to Strike 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

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