

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Calhoun County
Honorable Maite Murphy, Circuit Court Judge
Appellate Case No. 2019-000926

RECEIVED
Sep 30 2020
SC Court of Appeals

THE STATE,

Respondent,

vs.

DERRICK TYLER MILLS,

Appellant.

**MOTION TO STRIKE
APPELLANT’S COMBINED FINAL BRIEF
AND REQUIRE THE FILING OF
AMENDED FINAL BRIEFS CONFORMING TO
THE REQUIREMENTS OF THE SOUTH CAROLINA
APPELLATE COURT RULES**

Respondent (“the State”) would respectfully show unto the Court as follows:

I.

In the case at bar, Appellant Derrick Tyler Mills is appealing from his conviction for armed robbery. The sole issue raised on appeal relates to the propriety of the trial judge’s decision to reassemble the jury for purposes of receiving its verdict.

II.

During the course of the appeal, Appellant has served and filed an Initial Brief of Appellant and Designation of Matter, the State has served and filed its Initial Brief of

Respondent and Designation of Matter, and Appellant has served and filed an Initial Reply Brief of Appellant. Likewise, the Record on Appeal has been served and filed.

III.

On September 24, 2020, Appellant served and filed a document titled “Final Brief of Appellant (Including repaginated Reply to Initial Brief of Respondent).” Through that document, Appellant has combined his initial briefs into a single document and has treated the two earlier briefs as a single one for purposes of page numbering. Beyond that, the document includes the conversion of transcript references to references to the Record on Appeal, which is a change fully permitted by the South Carolina Appellate Court Rules. However, the document as presently filed also contains a number of substantive changes that are *not* permitted by our appellate court rules. Specifically, the document includes modified versions of the table of contents and table of authorities that are different from the ones contained in the initial briefs by virtue of the earlier tables being combined into joint ones.

IV.

Pursuant to Rule 211(b) of the South Carolina Appellate Court Rules, the form of a final brief may not be substantively altered from the form of the initial brief and, instead, must be identical aside from a few clearly-delineated exceptions. See Rule 211(b), SCACR (“The final brief(s) shall be identical to the brief(s) previously served under Rule 208, except for the following [limited areas].”). Regarding those clearly-delineated exceptions, *only* the following changes are permitted to be made to a final appellate brief: (1) references to transcript pages can be changed to refer to the corresponding page of the Record on Appeal; and (2) obvious typographical mistakes or errors can be corrected. Id. Importantly, “[n]o other changes may be made.” Id. Furthermore, pursuant to Rule 267(e) of the South Carolina Appellate Court Rules, a

Final Brief of Appellant is required to have a blue cover while a Final Reply Brief of Appellant is required to have a gray cover, which demonstrates two distinct initial briefs cannot properly or permissibly be combined into a single document at the final briefing stage.¹ See Rule 267(e), SCACR (“The cover of the Record on Appeal shall be white; that of the brief of appellant blue; that of respondent red; that of an intervenor or amicus curiae green; and that of any reply brief gray.”).

V.

As presently filed, Appellant’s “Final Brief of Appellant (Including repaginated Reply to Initial Brief of Respondent)” contains substantive changes that go beyond alterations to transcript references or correction of typographical errors and constitutes a combined version of two briefs into one. As a result, Appellant’s “Final Brief of Appellant (Including repaginated Reply to Initial Brief of Respondent)” is *not* “identical” to the initials briefs as required and does not conform to the mandates of the South Carolina Appellate Court Rules. Rule 211(b), SCACR. Therefore, the State asks this Court to strike Appellant’s “Final Brief of Appellant (Including repaginated Reply to Initial Brief of Respondent)” and require the filing of amended final briefs fully complying with the requirements of our appellate court rules. See Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.”).

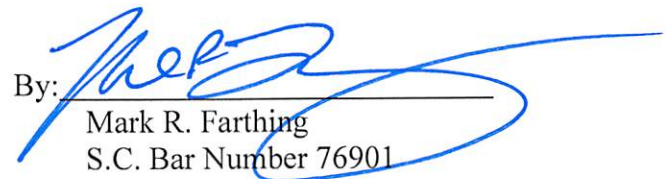
¹ At present, the South Carolina Supreme Court has temporarily suspended the requirements of Rule 267(e) concerning final brief cover color but has *not* altered any of the requirements of Rule 211(b). RE: Operation of the Appellate Courts During the Coronavirus Emergency, S.C. Sup. Ct. Order dated May 29, 2020.

WHEREFORE, Respondent prays this Court will strike Appellant’s “Final Brief of Appellant (Including repaginated Reply to Initial Brief of Respondent);” require the filing of an Amended Final Brief of Appellant and an Amended Final Reply Brief of Appellant that both fully conform to the requirements of the South Carolina Appellate Court Rules; hold all appellate timelines in abeyance pending a ruling on the State’s motion; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

By: 
Mark R. Farthing
S.C. Bar Number 76901

September 30, 2020

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PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Motion to Strike Appellant's Combined Final Brief and Require the Filing of Amended Final Briefs Conforming to the Requirements of the South Carolina Appellate Court Rules on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Tommy A. Thomas, Esq.
Post Office Box 88
Irmo, SC 29063

I further certify all parties required by Rule to be served have been served.
This 30th day of September, 2020.



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

Caroline Collins

From: Caroline Collins
Sent: Wednesday, September 30, 2020 3:35 PM
To: 'Tommy Thomas'
Cc: 'Jackie Miller'; Mark Farthing; William Blich
Subject: The State v. Derrick Tyler Mills (2019-000926)
Attachments: Mills.Motion to Strike Combined Final Brief (02392054xD2C78).PDF

Follow Up Flag: Worldox

Good Afternoon Mr. Thomas,

Attached please find a copy of the Motion to Strike Appellant's Combined Final Brief and Require the Filing of Amended Final Briefs Conforming to the Requirements of the South Carolina Appellate Court Rules in The State v. Derrick Tyler Mills (2019-000926). This request will be submitted to the Court of Appeals today via the AIS One Drive System.

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

Thank you!

Caroline Collins

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

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