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Apr 07 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Berkeley County  
Honorable R. Markley Dennis, Jr., Circuit Court Judge  
Appellate Case No. 2019-000511

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THE STATE,

Respondent,

vs.

AARON McKENZIE CAPERS,

Appellant.

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**RETURN TO “PETITION FOR AN EXTENSION OF TIME TO FILE ROA  
REQUEST FOR LEAVE OF COURT TO SUBMIT A COPY OF  
COURT EXHIBIT NO. 1 AND REQUEST FOR LEAVE OF COURT  
TO SUBMIT EVALUATION OF APPELLANT UNDER SEAL”**

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Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

In March of 2019, Aaron McKenzie Capers was convicted by a jury of first-degree burglary, first-degree criminal sexual conduct, armed robbery, kidnapping, and possession of a weapon during the commission of a violent crime, and he was sentenced to an aggregate eighty-year term of imprisonment for his crimes. Subsequent to that, Capers filed a timely notice of appeal, but he then followed that by filing several timely post-trial motions along with an amended notice of appeal. Due to the pending post-trial motions, Capers’s appeal was temporarily held in abeyance to allow for those motions to be resolved, and, ultimately, the trial

judge finally resolved the pending post-trial motions through a written order issued on February 19, 2021. In May of 2021, this Court directed Capers to proceed forward with his appeal due to the final resolution of the post-trial motions.

## II.

In May of 2022, Capers submitted his Initial Brief of Appellant and Designation of Matter. However, due to some issues, Capers sought permission from the Court to file an Amended Initial Brief of Appellant and Amended Designation of Matter. In June of 2022, the amended documents were submitted to the Court, and this Court issued an order accepting those documents in August of 2022. Thereafter, in December of 2022, the State submitted its Initial Brief of Respondent and Designation of Matter.

## III.

In his designation of matter, Capers identified a number of items for inclusion in the Record on Appeal, including Court's Exhibit # 1 and a forensic evaluation report.<sup>1</sup> Court's Exhibit # 1 is a collection of letters prepared by some of Capers's family members and friends, and it was submitted to the trial judge in support of Capers's unsuccessful request for reconsideration of his sentence. In addition to being submitted, some of those letters—or portions of them—were read aloud to the trial judge during a post-trial motion hearing. (1st Post-Trl. Hrg. Tr. pp. 19-39). Meanwhile, the forensic evaluation report was a report prepared by Dr. Donna S. Maddox in August of 2020 after she conducted a virtual psychiatric evaluation

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<sup>1</sup> In its Designation of Matter, the State—like Capers—identified the forensic evaluation for inclusion in the Record on Appeal. Appellate Records for State v. Aaron McKenzie Capers, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=69557>. However, unlike Capers, the State did not seek the inclusion of Court's Exhibit # 1. Id.

of Capers, and it, too, was submitted to the trial judge for his consideration.<sup>2</sup> In that report, Dr. Maddox detailed some claims Capers made to her about his personal history, including claims related to his past sexual experiences and childhood.

#### IV.

At present, the next step in the appellate process would be for the Record on Appeal to be filed. See Rule 210(a), SCACR (“Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief.”). To date, the Record on Appeal has not yet been filed. However, Capers has requested several extensions of time to do so, and this Court last extended the due date for the filing of the Record on Appeal to March 10, 2023.

#### V.

On March 22, 2023, Capers submitted a motion entitled “Petition for an Extension of Time to File ROA Request for Leave of Court to Submit a Copy of Court Exhibit No. 1 And Request for Leave of Court to Submit Evaluation of Appellant under Seal.” Through that motion, Capers has requested the following relief: (1) the grant of an additional thirty-day extension of time to file the Record on Appeal; (2) the grant of permission to submit the designated forensic evaluation report under seal; and (3) the grant of permission to submit a replacement copy of Court’s Exhibit # 1 in lieu of the original, which does not appear to be in possession of the Berkeley County Clerk of Court and cannot presently be located.

#### VI.

On April 6, 2023, this Court requested the State file a return to Capers’s motion.

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<sup>2</sup> Although the forensic evaluation report was submitted to the trial judge for his consideration, it was not formally filed with the Berkeley County Clerk of Court and, therefore, is not currently readily publicly accessible. Records for Aaron Mckenzie Capers, Berkeley County Ninth Judicial Circuit Public Index, <https://publicindex.sccourts.org/Berkeley/PublicIndex>.

## VII.

As to Capers's request for an additional extension of time for the filing of the Record on Appeal, the State has no objection to the request and wishes to leave the matter to the discretion of this Court. See Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.").

## VIII.

As to Capers's request for permission to file the forensic evaluation report under seal due to the nature of its contents, the State has no objection to that limited request and wishes to leave the matter to the discretion of this Court. See Ex parte Cap. U-Drive-It, Inc., 369 S.C. 1, 5, 630 S.E.2d 464, 466 (2006) (recognizing courts generally possess discretion regarding whether to seal or unseal a record from a court proceeding). However, if Capers's request in that regard is granted, the State requests the forensic evaluation report be submitted to this Court separate and apart from the remainder of the Record on Appeal, which the State believes should be publicly accessible. See id. at 10-11, 630 S.E.2d at 469-470 ("Public access to courts and their records serves several fundamental interests which are crucial to the proper functioning of judicial and government systems. Public access discourages perjury and encourages bringing the truth to light because participants are less likely to testify falsely in a sunlit courtroom before their neighbors than in a private room before court officials. Public access promotes free discussion of governmental affairs by imparting a more complete understanding to the public of the judicial system and issues resolved by that system. Public access serves as a check on inappropriate or

corrupt practices by exposing the judicial process to public scrutiny. Lawyers, witnesses, and judges may perform their duties in a more conscientious manner, knowing their conduct will be subject to public scrutiny either at the time of the proceeding or later through disclosure of court records.”).

## IX.

As to Capers’s request for permission to include a replacement copy of Court’s Exhibit # 1 for inclusion in the Record on Appeal due to the unavailability of the original, the State would note the following points. First, Capers’s representations about the present unavailability of Court’s Exhibit # 1 are accurate. Despite communications with personnel from the Berkeley County Clerk of Court’s Office and other individuals, the State has been unable to locate Court’s Exhibit # 1 or obtain any copies of it, and Capers’s appellate counsel’s efforts to determine the current location of Court’s Exhibit # 1 have likewise been unsuccessful. Second, as has been communicated to Capers’s appellate counsel, the State intends to provide consent for the inclusion of a replacement copy of Court’s Exhibit # 1 *if*: (1) a copy of the exhibit can be located in Capers’s trial counsel’s files; (2) trial counsel provides an affidavit attesting the located copy is a true and accurate copy of Court’s Exhibit # 1 to the best of her knowledge and recollection; and (3) the solicitor who prosecuted Capers’s case has an opportunity to review the exhibit to see if it is consistent with her personal recollections from trial. Assuming a replacement copy can be obtained, Capers’s trial counsel attests to its accuracy, and the solicitor who prosecuted the case—and, thus, is in a position to offer input on behalf of the State as to the accuracy of what was submitted during the trial proceedings—agrees to the copy’s accuracy, the State will consent to the inclusion of the replacement copy in the Record on Appeal. However, to date, the State has not yet been provided with the replacement copy or any affidavit from trial counsel. As a

result, the State is not yet in a position to be able to provide a final answer as to its position on the matter. Accordingly, the State believes resolution of this particular portion of Capers's motion would currently be premature and, therefore, asks this Court to refrain from ruling on it until the replacement copy has been obtained and the State has an opportunity to obtain input from the solicitor involved in the trial as to its accuracy.

**WHEREFORE**, Respondent prays the Court takes the actions it deems appropriate on the portions of Appellant's "Petition for an Extension of Time to File ROA Request for Leave of Court to Submit a Copy of Court Exhibit No. 1 And Request for Leave of Court to Submit Evaluation of Appellant under Seal" regarding the request for an additional extension of time to file the Record on Appeal and the request for the forensic evaluation report to be sealed; refrain from ruling at this time on the portion of Appellant's motion regarding a replacement copy of Court's Exhibit # 1 until further information can first be obtained; and grant 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

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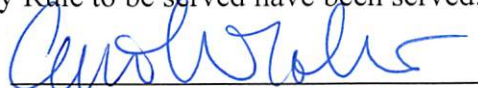
**PROOF OF SERVICE**

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I, Caroline Collins, certify I have served the within Return to "Petition for an Extension of Time to File ROA Request for Leave of Court to Submit a Copy of Court Exhibit No. 1 And Request for Leave of Court to Submit Evaluation of Appellant under Seal" on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Tara Dawn Shurling, Esquire  
3614 Landmark Drive, Suite A  
Columbia, SC 29204

I further certify all parties required by Rule to be served have been served.  
This 7th day of April, 2023.



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CAROLINE COLLINS  
Administrative Coordinator  
Office of the Attorney General

## Caroline Collins

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**From:** Caroline Collins  
**Sent:** Friday, April 7, 2023 10:22 AM  
**To:** tdslaw@shurlinglaw.com; tdshurling@aol.com  
**Cc:** Mark Farthing; William Blich  
**Subject:** The State v. Aaron McKenzie Capers (2019-000511)  
**Attachments:** Capers.Return to Fourth Extension Request and Request for Other Relief (Record on Appeal) (03260837xD2C78).PDF

Good Morning Ms. Shurling,

Attached please find the Return to “Petition for an Extension of Time to File ROA Request for Leave of Court to Submit a Copy of Court Exhibit No. 1 And Request for Leave of Court to Submit Evaluation of Appellant under Seal” in The State v. Aaron McKenzie Capers (2019-000511). This return will be submitted to the South Carolina Court of Appeals today via 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  
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