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Aug 05 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable Grace Gilchrist Knie, Circuit Court Judge
Appellate Case No. 2023-000511

THE STATE,

Respondent,

vs.


KEITH VINCENT BROWN,

Appellant.

**MOTION TO PERMIT THE INCLUSION
OF COPIES OF EXHIBITS
IN THE RECORD ON APPEAL**

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

I.

 In March 2023, Appellant Keith Vincent Brown was tried for burglary in the first degree and petit larceny in the Spartanburg County Court of General Sessions before the Honorable Grace Gilchrist Knie, Circuit Court Judge. At the conclusion of trial, the jury convicted Brown as indicted, and Judge Knie sentenced him. Brown’s appeal is currently pending before this Court.

II.

During the suppression hearing held on the first day of the trial in this matter, several exhibits—including two photographs marked as State’s Exhibits 5 and 7—were identified by a witness and introduced as exhibits for purposes of the hearing. (R. p. 29, line 21 – p. 30, line 11;

p. 45, line 11 – p. 46, line 3).

III.

Based on the issues raised by Brown on appeal and the admission and testimony about State's Exhibits 5 and 7 during the suppression hearing, the State referred to them in its appellate brief filed with this Court. This Court granted the State's motion to amend its Designation of Matter to include both exhibits in the Record on Appeal.

IV.

The Spartanburg County Clerk of Court's Office and the court reporter have both informed the Attorney General's Office that they do not have State's Exhibits 5 and 7 and, thus, cannot provide them for transport to this Court.¹ Because the original photographs entered into evidence as State's Exhibits 5 and 7 could not be located, the Attorney General's Office contacted the Seventh Circuit Solicitor's Office and obtained from that office what are believed to be true and accurate copies of the two exhibits. In addition, Assistant Solicitor Smith has signed an affidavit attesting to the accuracy of the provided copies of those two exhibits to the best of his knowledge and recollection.²

V.

As State's Exhibits 5 and 7 have properly been designated for inclusion in the Record on

¹ Brown's counsel ran into a similar issue when putting together the physical Record on Appeal in that State's Exhibit 8 (a document), which was also admitted during the suppression hearing (R. p. 59, line 24 – p. 60, line 8), was not available for transport because neither the Clerk of Court's Office nor the court reporter had it. The undersigned counsel obtained a copy from Assistant Solicitor Spenser H. Smith, the attorney in the Seventh Circuit Solicitor's Office who represented the State during Brown's trial, and provided it to Brown's counsel.

² The affidavit provided by the Assistant Solicitor Smith has been included with this motion as Motion Attachment. As reflected in that affidavit, copies of State's Exhibits 5 and 7 have been included with it as Attachment "A" and Attachment "B."

Appeal and are relevant to the resolution of Brown’s appeal, the Record on Appeal cannot be properly completed without their inclusion. *See* Rule 210(c), SCACR (“The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267.”). However, despite being admitted as exhibits during Brown’s trial, they are not in the possession of and cannot be obtained from either the Spartanburg County Clerk of Court’s Office or the court reporter. Therefore, the State asks this Court to allow copies of State’s Exhibits 5 and 7 obtained from the Seventh Circuit Solicitor’s Office to be filed with this Court in place of the original exhibits.

WHEREFORE, Respondent prays this Court will allow what are believed to be true and accurate copies of State’s Exhibits 5 and 7 to be filed with this Court as part of the Record on Appeal in place of the original exhibits and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

AMIE L. CLIFFORD
Special Assistant Attorney General
aclifford@cpc.sc.gov
S.C. Bar No. 1285

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

By: 
Amie L. Clifford
Special Assistant Attorney General

August 5, 2024

MOTION ATTACHMENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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vs.

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Appellant.

AFFIDAVIT

Personally appeared before me, Spenser H. Smith, who being duly sworn, attests to the following:

I.

I am an Assistant Solicitor in the Seventh Judicial Circuit Solicitor's Office.

II.

I served as one of the prosecutors for the State of South Carolina in Appellant Keith Vincent Brown's case. Additionally, I was present during the pre-trial motions hearing and trial conducted on March 14-16, 2023, in Appellant's case, including when two photographs were presented to and discussed with the trial judge and entered into evidence for the purposes of the pre-trial hearing.

III.

Although those photographs were marked as exhibits and entered into evidence for pre-trial hearing purposes, neither of those items currently appears to be in possession of either the court reporter or the Spartanburg County Clerk of Court for reasons unclear. Nevertheless, the above-referenced photographs were before the trial judge during the circuit court proceedings as they were marked and introduced as State's Exhibit 5 and State's Exhibit 7. Furthermore, the pictures were explicitly referenced in the transcript from the pre-trial motions hearing on pages 63-64 and 80.


IV.

Exact copies of the above-referenced photographs that were introduced during the pre-trial hearing as State's Exhibit 5 and State's Exhibit 7 have been included with this affidavit as Attachment "A" (State's Exhibit 5) and Attachment "B" (State's Exhibit 7).

V.

To the best of my knowledge and experience, the included exhibits identified as Attachment "A" and Attachment "B" truly and accurately reflect the exhibits that were before the trial judge during the circuit court proceedings in Appellant's case.

WHEREFORE, the undersigned hereby certifies that the above is true to the best of his knowledge and recollection. I have this day been provided a copy of this Affidavit and hereby acknowledge receipt thereof.



SPENSER H. SMITH
Assistant Solicitor, Seventh Judicial Circuit

SWORN to before me this 29 day of July, 2024.

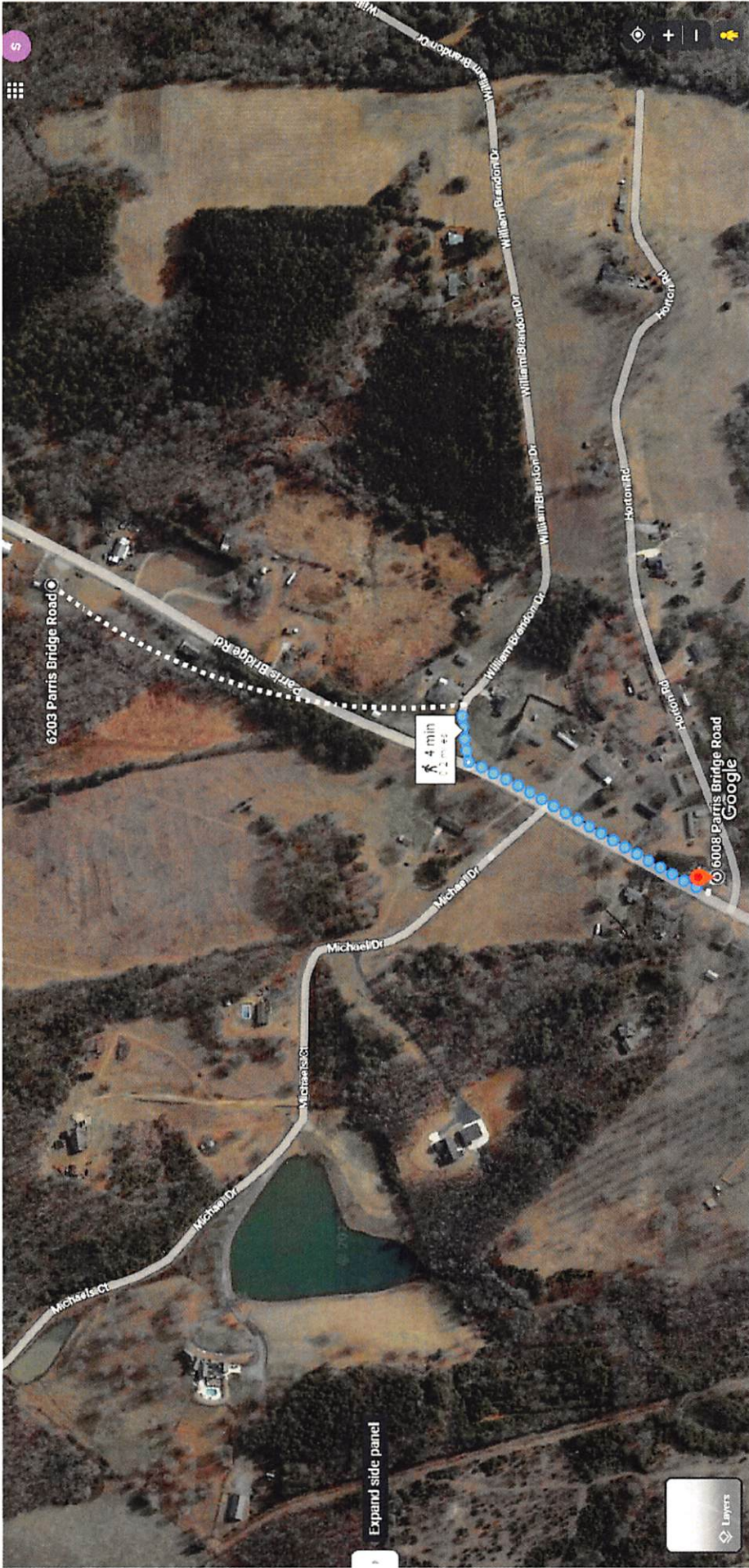


Notary Public for South Carolina
My Commission Expires: 5-19-32

ATTACHMENT “A”



ATTACHMENT “B”



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PROOF OF SERVICE

I, Grace Sommer, certify I have served the within Motion to Permit the Inclusion of Copies of Exhibits in the Record on Appeal by sending an electronic copy via email to the addresses listed in AIS for the following individuals:

Sarah E. Shipe, Esquire
S.C. Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

I further certify all parties required by Rule to be served have been served.
This 5th day of August, 2024.



GRACE SOMMER
Legal Assistant
Office of the Attorney General