

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 14 2014

Appeal from Spartanburg County
The Honorable J. Derham Cole, Presiding Judge

SC Court of Appeals

Appellate Case No: 2013-001411

THE STATE,

Respondent,

vs.

ROBERT O'DELL BROWN,

Appellant.

RETURN TO MOTION TO UNSEAL EXHIBIT

Respondent, through its undersigned counsel, making return to Appellant's Motion to Unseal Exhibit, would respectfully show unto this Court as follows:

I.

On June 20, 2013, Appellant was convicted after a jury trial and was sentenced by the Honorable J. Derham Cole to ten (10) years for resisting arrest with a deadly weapon (12-GS-42-360); three (3) years for failure to stop, second or subsequent offense (12-GS-42-359); thirty (30) years for attempted murder; and five (5) years for possession of a weapon. The thirty (30) year sentence was ordered to be served consecutively to the sentences for resisting arrest and possession of a weapon.

II.

Appellant, through counsel, served notice of appeal on June 25, 2013.

III.

During a pre-trial hearing held on May 9, 2013, Appellant moved, *inter alia*, to compel disclosure of personnel files, internal affairs files and any evidence of prior conduct of Officers Brad James, Jason Bryant, and Lorin Williams which might demonstrate the officers' character or credibility in a manner favorable to Appellant's case. (Exhibit 1 & Exhibit 3, pp. 3 - 4[attached to Appellant's Motion to Unseal Exhibit]). It was asserted in the pre-trial motion that the State alleged Appellant failed to stop and attempted to murder Deputy Brad James by shooting James while resisting arrest and the Deputies Jason Bryant and Lorin Williams later took unrecorded statements from Appellant. (Exhibit 3 [attached to Appellant's motion]) Appellant asserted he needed the information to conduct an investigation concerning the credibility of Deputy James and other officers. Appellant argued that he was looking for previous "write-ups" for falsifying reports or using excessive force in the past, "concealing information, and "disciplinary or any other actions that may relate to [officer] credibility and which may lead . . . to additional evidence which may be admissible in the case as, again, as it relates to the officers' credibility." Appellant's request was based upon **rumors** about Deputy James. (*Id.* pp.3 - 4; 8 - 11)

The State opposed disclosure on the grounds the request (1) was based upon rumor; (2) was information outside the custody or control of the prosecutors; (3) might contain personal

information which cannot be disclosed for confidentiality reasons; and (4) the files did not contain anything relating to or arising from the offenses with which Appellant was charged and would not be relevant based upon the limitations on use of prior conduct for impeachment purposes. (Exhibit 3, pp. 5 – 7; 11).

Upon trial court instruction, the files were subpoenaed and reviewed by the prosecutor for possible disclosure. Even though the documents did not appear to be subject to disclosure, the prosecutor, out of an abundance of caution, identified two items consisting of one page from a sheriff's department file and other pages from a city police department file for in-camera review by the trial court. The trial court noted that Appellant had possession of seven of the ten or eleven pages in question from an unidentified source. The trial court conducted an in-camera review of the three pages not in Appellant's possession and determined the pages were not relevant, would not lead to relevant information, and were not subject to disclosure pursuant to Rule 5, SCRCrimP, or Brady v. Maryland. (Exhibit 4, p. 52 - 58 [attached to Appellant's motion]). The trial court described the three sheets of paper that were not in Appellant's possession as a cover letter and two sheets from a personnel file about **a matter unrelated to this case or any other case or investigation**. The trial court sealed and retained custody of the three pages it reviewed in-camera that were not already in Appellant's possession. (Exhibit 4, p. 53 – 56; 58 - 59)

IV.

Appellant now moves this Court to unseal the documents to permit review by his attorney and counsel for Respondent in order for Appellant to determine whether any issue related to the documents exists for purposes of the appeal. Appellant suggests there is an indication in the

record that the prosecuting witness, Deputy Brad James, was aggressive and might have shot first. However, Respondent sees no indication of those facts in the record and notes for this Court that Judge Cole was aware Appellant wanted anything from the personnel files that could be used to explore the possibility of aggressive behavior or untruthfulness. Judge Cole found nothing in the documents was relevant. Respondent also notes that the events leading to the charges against Appellant were captured on a video and/or audio recording that supports Deputy James' testimony.

Nevertheless, the documents in question could contain sensitive personal information unrelated to anything involved in this case that are precluded from disclosure by law to anyone without the consent of the officers. The undersigned has no knowledge of the content of the sealed documents, does not represent the city, county or the law enforcement involved, and cannot make or waive any response by those individuals might present to disclosure of their possible personal, private, and confidential information. The documents could contain confidential medical or identifying data not subject to disclosure. Moreover, Appellant has not shown anything in the sealed documents is relevant, particularly in view of the limitation placed on use of impeachment through prior conduct evidence. See Rules 403; 404; 405; 608 SCRE. Respondent notes Appellant did not use any of the documents he obtained from the same personnel files from the unidentified source in his cross-examination of Deputy James. It was clear from the arguments made that Appellant was making a "blunderbuss shot into the air in hopes that some game would fall to the earth." State v. Mixon, 275 S.C. 575, 274 S.E.2d 406 (1981) The request did not satisfy Brady or Rule 5 and there is no necessity to reveal the contents of personnel files to counsel. .

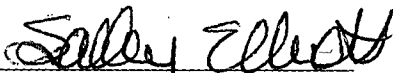
However, Respondent has no objection to this Court's review of the documents under seal during its consideration of any issue Appellant might present respecting the trial court's failure to require disclosure. It is not unusual for our appellate court to require that such documents remain under seal during the appellate court's consideration. See State v. Benett, 328 S.C. 251, 493 S.E.2d 845 (1997).

WHEREFORE, Respondent respectfully prays that this Court deny the motion to unseal the documents but, instead, conduct its review of any issue presented under seal.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

BY: 
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ATTORNEYS FOR RESPONDENT

August 14, 2014

STATE OF SOUTH CAROLINA
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THE STATE,

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ROBERT O'DELL BROWN,


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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Motion to Unseal Exhibit on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, Susan B. Hackett, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

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

This 14th day of August, 2014.


ANGELA BENNETT
Administrative Assistant

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Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

August 14, 2014

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. Robert O'Dell Brown
Appellate Case N: 2013-001411

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Return to Motion to Unseal Exhibit along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab
Enclosures

cc: Susan B. Hackett, Esquire
Ms. Trisha Allen

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