

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 22 2014

SC Court of Appeals

Appeal from Charleston County
The Honorable J.C. Nicholson, Jr., Presiding Judge

Appellate Case No: 2013-000725

THE STATE,

Respondent,

vs.

LAMAR SEQUAN BROWN,

Appellant.

RETURN TO MOTION TO STRIKE

Respondent, through its undersigned counsel, and making return to Appellant's motion to strike would respectfully show unto this Court as follows:

I.

On November 13, 2012, Appellant was indicted for First-Degree Burglary (2012-GS-10-7545). He was tried before a jury on March 6-8, 2013, with the Honorable J.C. Nicholson, Jr., presiding. On March 8, the jury returned a verdict of guilty, and Appellant was sentenced to 18 years in prison. On March 14, 2013, Appellant filed a motion for a new trial, which was denied without a hearing on March 22, 2013. Appellant filed and served Notice of Appeal. Thereafter, Appellant's Initial Brief of Appellant and Designation of Matter were filed and served. Respondent filed and served its Initial Brief of Respondent and Designation of Matter on August

8, 2014.

II.

Appellant, through counsel, moves this Court to order footnote 5 of Respondent's Initial Brief stricken because he contends it contains factual information outside the record of the appeal. He also asks that the Court hold the deadline for filing and serving Appellant's reply brief in abeyance pending the Court's ruling on this motion.

III.

Respondent has no objection to the deadline for filing and serving Appellant's reply brief in abeyance pending this Court's ruling on the motion.

IV.

However, Respondent strenuously opposes Appellant's motion to strike and asserts that footnote 5 is properly included in Respondent's brief as a matter of which this Court may take judicial notice. "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." Rule 201(b), SCRE. Respondent submits the website contained in the footnote cannot be seriously attacked. It is beyond dispute that the T-Mobile supported website referenced in the footnote exists in the public realm. The website is published by an experienced technical center employee of T-Mobile and appears on the T-Mobile website. Respondent submits that the website constitutes a "readily available source of indisputable reliability." See Bowers v. Bowers, 349 S.C. 85, 561 S.E.2d 610 (Ct. App. 2002). Moreover, the default of "1,2,3,4" is so well known that it is a matter of common knowledge that is accepted by the general public without dispute. See Rule 201, SCRE; Martin v. Bay, 400 S.C. 140, 732 S.E.2d

667 (Ct. App. 2012); S.C. D.S.S. v. Janice C, 383 S.C. 221, 678 S.E.2d 463 (Ct. App. 2009).

Lastly, Respondent submits that, contrary to Appellant's argument, judicial notice may be taken at any stage of the proceeding. Rule 201(f), SCRE; see also Rule 220 (c), SCACR (stating that appellate court may affirm a ruling upon any ground appearing in the record).

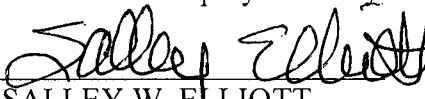
WHEREFORE, Respondent respectfully prays that this Court deny Appellant's motion to strike and that it hold all deadlines for the time for filing and serving in abeyance pending this Court's disposition of the motion; and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

BY:


SALLEY W. ELLIOTT
S.C. Bar No: 1871

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ATTORNEYS FOR RESPONDENT

August 22, 2014

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THE STATE,

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Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Motion to Strike on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, David Alexander, 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 22nd day of August, 2014.


ANGELA BENNETT
Administrative Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

August 22, 2014

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

Re: The State v. Lamar Sequan Brown
Appellate Case N: 2013-000725

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Return to Motion to Strike 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: David Alexander, Esquire
Ms. Trisha Allen