

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Saluda County

J. Michael Baxley, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

OCT 06 2014

**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

GERALD R. WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2013-002304

\_\_\_\_\_  
MOTION TO TRANSPORT AND UNSEAL COURT'S EXHIBIT 3  
\_\_\_\_\_

Appellant moves this Court to have Court's Exhibit 3 from the trial court transported to this Court and unsealed to allow for its inspection by appellant's counsel and a representative of the Attorney General to determine whether any issue relating to the exhibit should be filed as part of appellant's direct appeal. Appellant's counsel has communicated with Salley Elliott of the Attorney General's Office in an attempt to obtain her consent to this motion. Ms. Elliott graciously indicated she would review the matter and determine whether she could consent, however, pressing time restraints require the filing of this motion before Ms. Elliott could make a final decision.

Appellant's counsel needs to review Court's Exhibit 3 before he can fully assess the issues to be raised on appeal. Court's Exhibit 3 is a SLED investigative report involving Officer William Brett Long. Officer Long was an important witness in the trial of this matter. He testified that he made the stop of a vehicle in which appellant was arrested the night of the shooting. He also testified regarding his observations of the vehicle prior to the stop.

Before trial, appellant's attorneys told the court they learned that the solicitor who tried appellant "filed some type of formal complaint on Officer Long" and asked for that information pursuant to their discovery requests. Tr. 74.<sup>1</sup> Appellant argued that if this information implied some dishonesty, that it would be fodder for impeachment. Tr. 74-75. The solicitor admitted he had SLED look into the officer's conduct regarding the service of subpoenas. Tr. 76-77. He gave the investigative file to Judge Baxley to review *in camera*. Tr. 77. Judge Baxley reviewed the file and determined that it was not probative or relevant. Tr. 79. The trial judge said the investigation dealt with whether a subpoena was served appropriately, but also said that a confidential informant had made some allegations regarding the officer. Tr. 79-81. He denied appellant's request and appellant's objection was noted for the record. Tr. 81.

Judge Baxley initially declined to have the document sealed and made a court's exhibit. Tr. 81. Later in the trial, he reversed his decision and had the SLED report made Court's Exhibit 3 and sealed. Tr. 104-05.

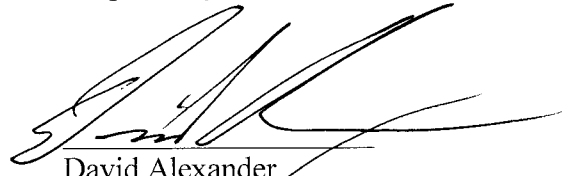
In order to determine whether to raise the issue concerning disclosure in appellant's brief, counsel needs to review the exhibit to determine whether such an issue has merit. It is in the best interest of all parties to have appellant's counsel review the documents prior to deciding whether to raise the issue on appeal. Raising a clearly non-meritorious issue wastes the time of all parties involved.

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<sup>1</sup> Relevant portions of the transcript are attached to this Motion as Exhibit A.

Appellant respectfully requests the sealed court's exhibit be transported to the Court of Appeals and there unsealed for inspection and review by appellant's counsel and a representative of the Attorney General's Office. Further, appellant respectfully requests the timelines for filing the initial brief of appellant and designation of matter be held in abeyance pending resolution of this motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander  
Attorney for Appellant

October 6, 2014

# **EXHIBIT A**

1 we're working with here.

2 Let's move to the next one which apparently  
3 involves the allegation of a faulty Schmerber order.

4 **MR. MADSEN:** Judge, we have gone over the  
5 information that we have received and we will  
6 withdraw that request. We believe that there was  
7 some things that -- the order was done in the right  
8 way. So we do not have a request for anything under  
9 Schmerber.

10 **THE COURT:** All right. Thank you. The next  
11 matter I see is a question about failure to disclose  
12 under Brady.

13 **MR. MADSEN:** Your Honor, it's our understanding  
14 that one of the sheriff's deputies that is on the  
15 witness list, or former sheriff's deputies, Deputy  
16 Grenier, has been fired by the sheriff's department.  
17 We do not know why or what's going on. We believe  
18 that under Brady, Kyle versus Whitley, that we are  
19 entitled to that information.

20 Additionally, another police officer with  
21 Saluda City, Brett Long, it's our understanding that  
22 Solicitor Maye himself filed some type of formal  
23 complaint on Officer Long. We believe that we would  
24 be entitled to that information. Whatever written  
25 documentation, obviously, we're not privy, but as

1 Your Honor said, you're from a small county, you  
2 hear about certain things in a small county, but we  
3 do believe that under Brady, we are entitled to that  
4 information.

5 **THE COURT:** And what would be the nexus to this  
6 case?

7 **MR. MADSEN:** If they've been fired or  
8 disciplined for lying on a particular case, I  
9 certainly think that that -- there would be a nexus  
10 to that.

11 **THE COURT:** Okay. Very good.

12 All right. Mr. Maye, you want to be heard?

13 **MR. MAYE:** Your Honor, as to Officer Grenier in  
14 this case, we don't have any information. We just  
15 maintain it's a fishing expedition. They've heard  
16 that this officer is not at the sheriff's office  
17 anymore and they want to know why in hopes that  
18 there might be some impeachment evidence.

19 Officer Grenier has no conviction for any crime  
20 that would subject him to impeachment. It wouldn't  
21 even be necessary for us to run any criminal  
22 history.

23 I have no information that he was discharged  
24 for any misconduct or anything involving dishonesty.  
25 I asked him specifically today if him no longer

1           being at the sheriff's office in any way related to  
2           misconduct on his part in the way of dishonesty or  
3           anything that would result in impeachment and he  
4           assured me that he was not.

5           **THE COURT:** And he will be a witness for -- is  
6           he still a cooperating witness with you?

7           **MR. MAYE:** Yes, absolutely. He was with the  
8           sheriff's office -- Your Honor, quite frankly, we  
9           had a new sheriff. We had a sheriff's election and  
10          numerous officers are no longer with the sheriff's  
11          office. The new sheriff came in and put his own  
12          administration into place. It's probably the  
13          biggest turnover of officers that we've had. And we  
14          had -- the previous sheriff was in office for a long  
15          time. Many officers, upon the new sheriff taking  
16          office immediately or shortly thereafter, found  
17          themselves looking for jobs in other places.

18          But we don't have any information or any  
19          knowledge of any information that would be in any  
20          way relevant to this case or that we would think  
21          would be proper for impeachment.

22          **THE COURT:** And what about the police officer,  
23          apparently, you've had a dispute with or a grievance  
24          with?

25          **MR. MAYE:** Your Honor, I asked the South

1 Carolina Law Enforcement Division to look at matters  
2 involving the actual trying of a case and the  
3 failure to serve a subpoena in a case, Your Honor.  
4 They did an investigation. I have the investigative  
5 file.

6 I don't think that it has any nexus or  
7 relevance to this case, but what I would ask Your  
8 Honor to do is I'm going to give that file to you,  
9 ask you to make it a court's exhibit and review it.  
10 If you think it's in any way exculpatory evidence  
11 that has any nexus with this case, I would like for  
12 Your Honor to make that call.

13 I don't have any information involving anything  
14 that would be basically dishonesty. South Carolina  
15 Law Enforcement Division looked into the matter in  
16 which I asked them to. I have this file and I'm  
17 going to submit it to the Court.

18 **THE COURT:** All right. Let me just take a  
19 moment and review it and then we'll come back to  
20 you, Counsel, all right.

21 **MR. MADSEN:** Judge, all we would ask is on  
22 Deputy Grenier, if there's a personnel file  
23 associated, that Your Honor do the same thing. And  
24 if Your Honor determines that it's not relevant  
25 after reviewing it in camera, then obviously it --

1 deny any relief on that point.

2 As to Officer Long, as was said here in court,  
3 this apparently involves the failure to issue or  
4 serve a subpoena on a confidential informant. I'm  
5 not aware and the file makes no reflection of  
6 criminal activity or charges being levied against  
7 this officer.

8 Apparently, it had to do with just the  
9 administration of justice in that particular case  
10 and whether or not the subpoena was served  
11 appropriately. The CI may have made some  
12 allegations involving the officer, but that's a  
13 totally separate case, unfounded, hearsay and not  
14 likely to be admissible even if it was relevant.  
15 But the Court doesn't find it probative or relevant  
16 to the issues in the case with Mr. Williams and I  
17 would deny any relief with regard to that.

18 I have no objection to this being marked as a  
19 court exhibit. I don't know what the  
20 confidentiality of this document is, Counsel.

21 **MR. MAYE:** I would just ask that it be sealed  
22 if it's a court -- if the Court has ordered it to be  
23 relevant that -- like I said, it's not something  
24 that our office is pursuing. I have no information  
25 that there was any criminal misconduct to pursue in

1           this regard.

2           And, basically, I've taken the position in the  
3           past when we have delivered personnel files and the  
4           court has reviewed them, we just ask that the court  
5           seal them so that they're not available for the  
6           public to come down and look at them because those  
7           are not normally documents that would be public  
8           information, an individual's personnel records or  
9           files.

10           **THE COURT:** Well -- and rather than tax the  
11           Clerk with an additional document yet to be sealed  
12           here among the sea of public records that you keep  
13           up with, I'm simply going to return this to you and  
14           decline to do it. I will tell you that it is --  
15           what I have is a SLED investigative report, which is  
16           dated January 23rd, 2013. Thus, there would be an  
17           ability to retrieve this document if it becomes an  
18           appellate issue somehow. But I simply would decline  
19           to make it a part of this record for public  
20           confidentiality purposes.

21           Mr. Williams, just to put this in perspective  
22           for you, sir, in a trial with the allegations  
23           against you that there are and an officer takes the  
24           stand to testify to just -- and any witness for that  
25           matter, to go off on a tangent and rip and tear into

1 things that really are not related to this case is  
2 just simply not relevant or probative to the issues  
3 at bar. And, thus, I decline to find that there's  
4 been any type of violation of the Brady requirements  
5 to give information to your side of the case that is  
6 exculpatory because I certainly find that it is not  
7 exculpatory, not relevant and not probative.

8 **MR. MADSEN:** And, Judge, we would just like our  
9 objection noted. We would have liked that to be  
10 sealed also so that there would be basis for  
11 appellate review.

12 **THE COURT:** That's respectfully noted. And,  
13 again, just to make sure we're clear, I made a  
14 notation of the date of that document and it can be  
15 retrieved, but I just simply decline to tax our  
16 Clerk with yet another document that is -- would  
17 have to be sealed in the course of this proceeding.

18 Now, let's move to the next issue, Counsel.

19 **MR. MADSEN:** Judge, we had received, I believe  
20 today, an updated rap sheet on one of the alleged  
21 victims, Al Jerome Young. There are two other  
22 individuals, a Yocinda Williams?

23 **MR. MAYE:** Ycedra Williams.

24 **MR. MADSEN:** Excuse me. Ycedra Williams and  
25 also a Joseph Wrighton. Our understanding is that

1 marked for identification.)

2 **THE COURT:** All right. Very good. Court's 2  
3 now marked.

4 I'm going to go back and reverse a decision I  
5 made previously. Mr. Maye, let's make a copy of  
6 that SLED report that's on Officer Long and let's  
7 seal it.

8 **MR. MAYE:** I'll give you this one. I don't  
9 need a copy of it. They e-mailed it to us and I  
10 made a copy. That's absolutely no problem.

11 **THE COURT:** Very good. If you'll give it to  
12 our court reporter. We'll mark it and then seal it.

13 **MR. MAYE:** And, Your Honor, I do have a  
14 certified true copy of the search warrant and the  
15 return actually signed by the magistrate and I know  
16 that they -- I'm going to let -- make that an  
17 addendum basically to the one that had previously  
18 been provided to the defense that didn't have a  
19 signature of a magistrate on it, but it has been  
20 retrieved from the magistrate.

21 **THE COURT:** All right. Let's take a moment,  
22 let our court reporter get all of that paperwork in  
23 order.

24 (Court's Exhibit Number 1-A, search warrant,  
25 and Court's Exhibit Number 3, SLED report, marked

1 for identification.)

2 **THE COURT:** All right. So we have 1, 1-A, 2  
3 and Court's 3, and then when we leave today, we'll  
4 go ahead and seal 3 so that the confidentiality of  
5 that investigation will be protected, but yet it'll  
6 be preserved for review or for collateral review in  
7 the event there's some collateral attack down the  
8 road here.

9 Now, we have one more issue, which is witness  
10 sequestration. Do you wish to be heard on that?

11 **MR. MADSEN:** Judge, we actually have a couple  
12 more that have come up, sequestration is one of  
13 them. I don't necessarily think that the State -- I  
14 don't know if we need to be heard on that issue. We  
15 would just request sequestration of the witnesses  
16 besides their chief investigating officer who I  
17 guess is Deputy Quattlebaum.

18 **THE COURT:** All right. What's the State's  
19 position on sequestration?

20 **MR. MAYE:** Nothing, Your Honor. We leave that  
21 to the Court's discretion in this case, just ask  
22 that the sequestration of witnesses ordered extends  
23 to defense witnesses, as well as the State's  
24 witnesses.

25 **THE COURT:** Most assuredly. Whether -- if both

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CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Motion to Unseal Court's Exhibit 3 in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, S.C. 29201, and Gerald R. Williams, # at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 6<sup>th</sup> day of October, 2014.



David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 6th day of October, 2014.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023.



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

October 6, 2014

The Honorable Jenny Kitchings  
Clerk, S.C. Court of Appeals  
PO Box 11629  
Columbia, SC 29211

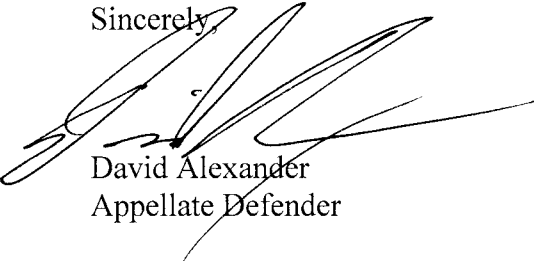
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SC Court of Appeals

Re: The State v. Gerald R. Williams

Dear Ms. Kitchings:

Enclosed is a motion to unseal in the above case. Thank you for your assistance in this matter.

Sincerely,



David Alexander  
Appellate Defender

DAA/mpm

cc: Salley W. Elliott, Esquire  
Hon. J. Michael Baxley  
Gerald R. Williams #279073