

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2013-000568

RECEIVED

NOV 14 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

Respondent,

v.

BARRY EUGENE LAFAVOR,

Appellant.

RETURN TO MOTION TO TRANSPORT AND UNSEAL COURT EXHIBIT

Respondent, by and through undersigned counsel, making return to the motion to transport and unseal a sealed court exhibit would respectfully show unto this Court:

1. Appellant was charged with second degree criminal sexual conduct with a minor, two counts of third degree criminal sexual conduct with a minor, and criminal solicitation of a minor. He was represented by Michael Routzong, Esquire, in the circuit proceedings.

2. Appellant proceeded to trial on June 26, 2013. However prior to trial, Appellant subpoenaed the records of the South Carolina Department of Social Services (DSS) respecting the child victims. It also appears that DSS moved to quash the subpoena. A pretrial hearing respecting

Appellant's access to the DSS records was held on May 21, 2013, before the Honorable Doyet A. Early, III. At the conclusion of the hearing, Judge Early ordered the DSS records to be provided to him for review. Appellant thereafter inquired about access to the records on June 18, 2013, and the records were made available to him on June 20, 2013. (See Appellant's Exhibit 1, pp. 28 – 29; Respondent's Exhibit 1). Judge Early issued a protective order filed June 19, 2013, allowing the records to be turned over but, due to the sensitive and confidential nature of personal information contained in the records, restricted access to counsel for the parties and counsel's employees, investigators and experts. Judge Early also restricted use of the DSS records to Appellant's trial only and prohibited public display or possession of the records by the defendant or any other lay person. (Respondent's Exhibit 1). Judge Early further ordered that the records be collected after trial, sealed, and maintained by the clerk of court to protect the confidentiality of the records. Id. Judge Early additionally ordered that the records be opened only upon order of the court upon a showing of good cause. Id.

4. Appellant moved for a continuance when the case was called for trial asserting that he had insufficient time to conduct a review of the DSS documents. The Honorable Michael G. Nettles denied the motion for continuance but placed the documents under seal and made them part of the record for purposes of any later appeal. (Appellant's Exhibit 1, pp. 29 – 33; 184 - 185; 299 - 303).

3. Appellant now moves for an order requiring the sealed DSS documents to be unsealed and transported to this Court. Appellant's counsel asserts the need to inspect the DSS records to determine whether any issue related to the DSS records should be filed as part of Appellant's appeal.

4. Respondent, upon obtaining a copy of Judge Early's order to respond to this motion, notes for the Court that it appears the exhibit in question (DSS records) was destroyed after trial by the Aiken County Clerk of Court pursuant to a subsequent order issued by Judge Early on July 9, 2013, as indicated on the bottom of the original Order of Protection. (See Respondent's Exhibit 1). Therefore, it is likely the exhibit is no longer available.

5. If the exhibit (DSS records) is available from the Clerk of Court, Respondent does not oppose the request to have the records transported to this Court but asserts the records must remain under seal due to the personal information contained therein, including personal identifying information as outlined in Judge Early's order. (Respondent's Exhibit 1). The content of the DSS records should not be released to C-Track or the public in any manner.

6. The State also requests that the exhibit (DSS records) be maintained by the Court of Appeals under seal, with the exception of permitting this Court and counsel for the parties to review the contents of the records at the Court of Appeals. Also, in order to maintain the confidentiality of the DSS records, the State requests that any portion of briefs or other written documents filed by the parties be placed under seal if reference is made in whole or part to information taken from the DSS records.

WHEREFORE, Respondent does not oppose the motion to transport the exhibit (DSS records) but opposes the request to unseal the exhibit with the exception of allowing this Court and counsel for the parties the ability to review the contents of the exhibit at the Court of Appeals. Respondent asks this Court to order the exhibit be maintained under seal with the exception of counsel for the parties and the Court and asks that this Court require the parties to file portions of any brief or other written document referencing any information contained in the DSS records

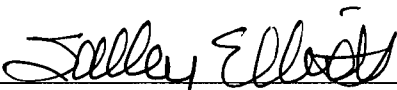
under seal to protect the confidential nature of the information in the records.

Respectfully submitted

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

J. STROM THURMOND
Solicitor, Second Judicial Circuit

BY: 
Salley W. Elliott
S.C. Bar No. 1871

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

November 14, 2014

RESPONDENT'S EXHIBIT 1

~~Certified copy files~~
~~original with crim-005~~ *not used*
~~John H. Bell~~ *CCW*

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT
State of South Carolina,)
vs.) PROTECTIVE ORDER FOR DSS RECORDS
Barry Eugene Lafavor,) 2013GS0200586 - 2013GS0200587
Defendant.) 2013GS0200589 - 2013GS0200593

FILED June 19 2013
Liz Godard
C.C.P. & G.S.
Cheryl S. Westall
Deputy Clerk
2013-6502-589, 2013-6502-587, 2013-65-02-593

The above-captioned matter came before this Court upon Motion of the State, by and through, Assistant Solicitor Ashley L. Agnew, requesting an in camera hearing to determine disclosure of certain DSS records subpoenaed by the Defendant's attorney, Michael Routzong. The said DSS records were reviewed in camera by the Court. Following the hearing, it appears that certain DSS records should be turned over to the Defense pursuant to said subpoena, with the following restrictions:

Due to the sensitive and confidential nature of DSS records, which depict the juvenile victims' personal information, including but not limited to social security numbers, home addresses, dates of birth and telephone numbers, the following restrictions shall be applicable to all such records:

1. Counsel for the Defense may view the DSS records and/or make copies of them in preparation for trial.
2. The said DSS records shall not be used for any purpose other than to prepare for the resolution of the case to which these records pertain.

The said DSS records shall not be publicly displayed, or used in any other fashion, except in judicial proceedings in the case to which the records pertain.

The said DSS records may be viewed only by counsel and counsel's employees, investigators, experts, and those determined by counsel to be necessary in the preparation of the case. No DSS records shall be divulged to any person not authorized to view said records pursuant to this Order.

5. Counsel shall not allow the DSS records to be in the Defendant's or any other layperson's custody. Counsel for the State and/or the Defense are responsible for making any

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, clerk of Court, of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

NOV 13 2014

Liz Godard
C.C.P. & G. S., Aiken County, S.C.
Cheryl S. Westall
Deputy Clerk

*Copies - Ashley Agnew
Michael Routzong*

JAC
#1

individual aware of the terms of this Order, prior to granting such individual possession of the DSS records.

- 6. That upon final resolution of the case, all DSS records shall be collected, sealed, and maintained by the Aiken County Clerk of Court in a manner protecting the confidentiality of the records and opened only upon Order of this Court for good cause shown. Likewise, any recipient of the DSS records shall surrender said records to the attorney who provided it so that it may be maintained in accordance with this Order.

IT IS SO ORDERED, that the said DSS records shall be turned over to the Defense for inspection and copying, pursuant to the protective order.

[Handwritten Signature]

Doyet A. Early, III
Resident Circuit Court Judge
Second Judicial Circuit

Aiken, SC

June 19, 2013

I received A copy of DSS Records for my file.

~~X Ashley L. Ayers~~

Date: 6/20/13

Returned copies: Stephanie Parsons
Date: 7/2/2013 /CSW

I received A copy of DSS Records for my file.

~~X Bryan Thomas II~~

Date: 6/20/13

For Michael Routzong,
Public Defenders Office

Returned copies: [Signature]
Date: 27 June 13

(Shannon D. Rosenkrantz)

All copies of records are to be destroyed.

[Signature]

Copies of DSS records returned to clerk's office have been destroyed.

Shannon D. Rosenkrantz
07-09-13

Aiken, SC

D.A. Early, III
July 9, 2013

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Motion to Transport and Unseal Court Exhibit on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, Lara M. Caudy, 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 November, 2014.



ANGELA BENNETT
Administrative Assistant

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



ALAN WILSON
ATTORNEY GENERAL

November 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. Barry Eugene Lafavor
Appellate Case N: 2013-000568

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Return to Motion to Transport and Unseal Court 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: Lara M. Caudy, Esquire
Ms. Trisha Allen

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