

The South Carolina Court of Appeals

The State, Respondent,

v.

Robert Odell Brown, Appellant.

Appellate Case No. 2013-001411

ORDER

Respondent has filed a motion to seal the briefs and a portion of the record on appeal. Appellant did not file a return.

"Judicial proceedings and court records are presumptively open to the public under the common law, the First Amendment of the federal constitution, and the state constitution." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006). A court must consider the following factors in deciding whether to seal or unseal a court record:

(1) ensuring the parties' right to a fair trial or hearing; (2) the need for witness cooperation; (3) the reliance of the parties upon expectations of confidentiality of the proceeding; (4) the public or professional significance of the proceeding; (5) the perceived harm to the parties from disclosure; (6) why alternatives other than sealing the documents are not available to protect legitimate private interests; and (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

Id. at 12, 630 S.E.2d at 470 (citing Rule 41.1, SCRCP). The court may also consider:

(8) public interest in the proceeding; (9) the private or public status of the litigants and case generally; (10) whether release would enhance the public's understanding of an important historical event; (11) whether the public already has access to information contained in the records; (12) whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors.

Id.; see also *In re Revised Order Concerning Pers. Identifying Info. & Other Sensitive Info. in Appellate Court Filings*, 407 S.C. 607, 608-09, 757 S.E.2d 421, 422 (2014) (stating "the standard established in *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006), and *Davis v. Jennings*, 304 S.C. 502, 405 S.E.2d 601 (1991), must be met before any request to seal all or a portion of a record will be granted").

Having considered those twelve factors, this Court does not believe sealing the record is permissible. We require Appellant to propose a suitable pseudonym for the police officer and a method to redact any personal identifying information. See *In re Revised Order*, 407 S.C. at 607-08, 757 S.E.2d at 421-22 (listing the five categories of personal identifying information parties "shall not include" in "documents filed with the appellate court"). We further require Appellant to use the proposed pseudonym in its brief and all places in the record where the police officer's name appears. We conclude a proper pseudonym and adequate redaction of personal identifying information will protect the parties and not hinder our ability to adequately review the record and briefs. Accordingly, this Court denies Respondent's motion to seal.


FOR THE COURT

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire

FILED
12/13/14

Susan Barber Hackett, Esquire
The Honorable J. Derham Cole