

STATE OF SOUTH CAROLINA
In the Supreme Court

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CAPITAL CASE

S.C. Supreme Court

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

The State of South Carolina,

Respondent,

v.

Ricky Lee Blackwell,

Appellant.

Appellate Case No. 2014-000610

**MOTION TO SEAL OR IN THE ALTERNATIVE STRIKE
INITIAL BRIEF OF APPELLANT;**

MOTION TO STRIKE DESIGNATION OF MATTER; AND

**MOTION FOR AN ORDER TO PROHIBIT INCLUSION OF PRIVILEGED MEDICAL
RECORDS OF A WITNESS AND/OR INFORMATION FROM THE PRIVILEGED
RECORDS IN THE BRIEFS AND IN THE RECORD ON APPEAL AND REQUIRE
APPELLANT TO FILE AN AMENDED INITIAL BRIEF**

Respondent, the State, moves this Court to seal the initial brief of appellant or in the alternative strike the initial brief of appellant, and also to strike the designation of matter and prohibit inclusion of privileged medical records of a witness not accepted in the record below in the briefs and the record on appeal for two reasons. First, Appellant includes in his brief reference to statements purportedly in a witness's medical records that were found to be protected by privilege. Inclusion in the publically available brief creates an additional infringement. Second, Appellant includes in his designation of matter the actual records which were not accepted into the record at trial, even as a proffer, due to the privilege. They may not be properly included in the

briefs, the record on appeal, or in argument to this Court. In support of this motion, Respondent would respectfully show the Court:

1. This is a capital case. Appellant was sentenced to death for the murder of a young child. There was a witness to the shooting, Ms. Angie Davis. Ms. Davis had been married to Appellant but was estranged from him at the time of the murder. The child was the child of Ms. Davis' then boyfriend. In opening statement, defense counsel stated that "the only reason" they were there was to have a jury determine the sentence. (Attachment 1, Trial Tr. p. 2349). He stated, essentially, that Appellant's guilt was not at issue but offered that the evidence would show it was the breakup of his marriage to Ms. Davis that began a series of perceived wrongs that led to Appellant shooting the child of Ms. Davis' new boyfriend. (Attachment 1, Trial Tr. p. 2354).

2. Defense counsel made a pre-trial motion for disclosure of psychiatric history of state's witnesses which was heard on November 6, 2013. At the hearing, defense counsel moved for disclosure by the State of the post-murder hospitalization records of Ms. Davis. (Attachment 2, Nov. 2013 Tr. p. 74). (See also Attachment 3, "Motion Disclosure of Psychiatric History of State's Witnesses"). The State did not have the records. (See Attachment 2, Nov. 2013 Tr. pp. 76-77). (See also Attachment 4, "State's Return to Defendant's Discovery Motion for Disclosure of Psychiatric History of State's Witnesses."). Defense counsel stated at the hearing he understood the State could not disclose what the State did not have, but he would put "everybody" on notice that he would issue a subpoena for the records. (Attachment 2, Nov. 2013 Tr. p. 77). Judge Couch "den[ied] the motion on the basis ... the State doesn't have the information." (Attachment 2, Nov. 2013 Tr. p. 77).

3. Ms. Davis testified in the guilt phase that she saw Appellant take the child from Ms. Davis' car and shoot her. (Attachment 1, Trial Tr. pp. 2383-2386). On cross-examination, defense counsel questioned Ms. Davis on purported statements she made to a counselor in post-murder

counseling sessions. The statements referenced did not describe the murder. In response to an objection, defense counsel argued he was seeking to show bias, and revealed for the first time that he had possession of records to impeach the witness.¹ Defense counsel conceded that the witness had made no statements in court on the subject matter upon which he sought impeachment. (Attachment 1, Trial Tr. p. 2406-2407). Judge Couch found the referenced statements contained matter more prejudicial than probative and, thus, unnecessary to the proceeding for mere impeachment. (Attachment 1, Trial Tr. p. 2416). Judge Couch ultimately ruled the witness had not waived the statutory privilege, (Attachment 1, Trial Tr. p. 2434), and that the information from her records could not be used nor could the records be proffered due to the statutory privilege, (Attachment 1, Trial Tr. pp. 2461-2462).

4. In his initial brief, Appellant has referenced not only the records in general, but described information purportedly in the records.² Appellant improperly references privileged material. Moreover, he references and relies upon matters that are not a part of the record and should not be allowed in the appeal. See Rule 210(c), SCACR (“The Record shall not, however, include matter which was not presented in the lower court”). See also Rule 210 (h), SCACR (absent proper supplemental record or statements of the case on appeal, “the appellate court will not consider any fact which does not appear in the Record on Appeal.”).

5. Appellant also improperly designated the privileged records that were not accepted into the record below. Rule 209 (b), SCACR (restricting designation to material that “may be

¹ Defense counsel admitted that he had obtained a copy of the records at issue. The method by which the records were obtained has never been fully developed and the State was not privy to the process. There is an assertion of an *ex parte* Order issued for the records, but the basis for the motion or the order has never been disclosed to the State, or, for that matter, the witness (at least according to the witness’s testimony that she was not asked to waive privilege).

² The State has never been given a copy of the records and can make no allegation as to the accuracy of the references.

properly include in the Record on Appeal”). To the extent that Appellant wishes to seek a supplemental record, he has neither asked to avoid the privilege, nor submitted authority or basis at this point to avoid the privilege— essentially, he would seek to utilize privileged records that were not accepted in the record below. He offers no basis why this Court should accept such a request. *See generally* Rule 212, SCACR (referencing supplementing with “transcript of proceedings or other matter which was before the lower court” and consent to supplement after the record on appeal filed but before argument). While Appellant may argue the fact that the records were not accepted, he need not place the privileged documents in public records to do so. To the extent he would seek to offer new argument not heard and considered by the trial judge, such additional arguments based on the privileged records would be procedurally barred from review. *See, e.g., State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 - 694 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.”). Again, Appellant is confined to that which is already in the trial court record.

6. S.C. Code § 44-22-90 protects and restricts disclosure of communications between patients and mental health professions. While there are limited exceptions within the statutes that defense counsel did not argue or rely upon those exceptions. Defense counsel argued generally that the right to confrontation trumped any such privilege, (Attachment 1, Trial Tr. pp. 2426 and 2433), and also included specific information from the records in support of his position. To the extent he wishes to pursue this argument, it is in the trial transcript and may be relied upon without the privileged documents being made a part of the public record. However, until this Court accepts such an argument, Section 44-22-90 still protects the information.

7. This Court has directed that parties be particularly sensitive to the use of medical records in filing documents that are open to the public. *In re Revised Order Concerning Personal*

Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 609, 757 S.E.2d 421, 422 (2014) (“Parties should also exercise caution in including other sensitive personal data in their filings, such as ... medical records...”). Special care should be taken to prevent improper disclosure, in any measure, of the privileged records. *See generally Jaffee v. Redmond*, 518 U.S. 1, 11, 116 S.Ct. 1923 (1996) (“The psychotherapist privilege serves the public interest by facilitating the provision of appropriate treatment for individuals suffering the effects of a mental or emotional problem. The mental health of our citizenry, no less than its physical health, is a public good of transcendent importance.”).

8. To include the privileged records by reference in the brief and/or by including in the record on appeal offends the statutory privilege under S.C. Code § 44-22-90, this Court’s 2014 Order directing medical records be handled with sensitivity, and Rule 210. Respondent moves for an order excluding any and all references to the contents of the privileged records, not otherwise presented and included in the trial transcript, in the appellate filings. Further, Respondent moves for an order prohibiting submission of the actual privileged records in the record on appeal or in a supplemental record on appeal.

9. Respondent acknowledges the argument in the trial transcript related to information from the privileged records. Respondent submits the trial court record may be relied upon in the appeal; however, Respondent moves for an order that the briefs and record on appeal be filed under seal, with redacted versions (redacting any and all reference to the purported contents of the records) only available to the public in light of the privilege. *See generally In re Revised Order, supra*. *See also Eugene S. v. Horizon Blue Cross Blue Shield of New Jersey*, 663 F.3d 1124, 1136 (10th Cir. 2011) (granting motion to seal medical records); *Abbey v. Hawaii Employers Mutual Insurance Company*, 760 F.Supp.2d 1005 (D. Hawai’i 2011) (granting motion to strike and seal medical records noting “compelling reason” to restrict public access to judicial records).

10. Counsel for Respondent has consulted with counsel for Appellant prior to filing this motion. Undersigned counsel has been advised that, while not conceding any point or argument, counsel for appellant does not object to the initial brief being sealed pending resolution of the motion. Undersigned counsel has further been advised that Appellant objects to all of the other relief requested in the instant motion, and will reserve the right to file a return to the motion.

11. Respondent respectfully request the time limits for filing the initial brief of respondent be held in abeyance pending resolution of this motion.

THEREFORE, Respondent respectfully requests the Court seal or in the alternative strike the initial brief of appellant; strike the initial brief and designation of matter; and further moves for an Order to prohibit inclusion of privileged medical records and information in the briefs and record on appeal, by reference or otherwise, and require Appellant to file an amended initial brief.

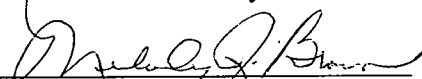
Respectfully submitted,

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STATE OF SOUTH CAROLINA
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CAPITAL CASE

Appeal from Spartanburg County
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PROOF OF SERVICE

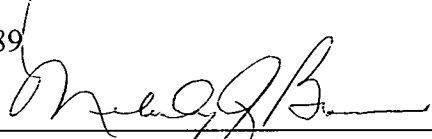
I, Melody J. Brown, certify that I have served Respondent's:

MOTION TO SEAL OR IN THE ALTERNATIVE STRIKE INITIAL BRIEF OF APPELLANT; MOTION TO STRIKE DESIGNATION OF MATTER; AND MOTION FOR AN ORDER TO PROHIBIT INCLUSION OF PRIVILEGED MEDICAL RECORDS OF A WITNESS AND/OR INFORMATION FROM THE PRIVILEGED RECORDS IN THE BRIEFS AND THE RECORD ON APPEAL AND REQUIRE APPELLANT TO FILE AN AMENDED INITIAL BRIEF

on Appellant by depositing one copy of same in the United States mail, postage prepaid, to counsel for appellant, addressed as follows:

Robert M. Dudek, Chief Appellate Defender
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South Carolina Commission on Indigent Defense
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This 28th day of January, 2015.


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THE STATE OF SOUTH CAROLINA

V.

RICKY LEE BLACKWELL

APPELLATE CASE NO. 2014-000610

ATTACHMENT 1

1 and the location and positions on the body.

2 I submit to you the evidence is clear, and, at the
3 close of this case, that you will do your duty and find the
4 defendant guilty of kidnapping H [REDACTED] B [REDACTED] C [REDACTED] and
5 murdering her.

6 Thank you.

7 THE COURT: Mr. McGuire, for the defense.

8 MR. MCGUIRE: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MR. MCGUIRE: Good afternoon.

11 I'm sorry you-all have to be here, and I tell you that
12 because no one here's a volunteer, and I'm not the same man
13 I am when I started this case four and a half years ago, and
14 you're not gonna be the same after either.

15 And you have to be wondering why are we in a trial to
16 determine guilt or not guilt in such a relatively obvious
17 set of facts. And I'll tell you the only reason is because
18 the only way that Mr. Blackwell can have a sentencing
19 hearing, hearing with a jury is to go through this process.

20 And if you're sitting there thinking well, it, it
21 sounds like I'm giving up and I'm conceding to the facts,
22 I'm admitting that Mr. Blackwell did, in fact, kill Brooke
23 Center, you're very right. He did. He did.

24 But this case, this case started with me four and a
25 half years ago. But it started with Ricky about 30 years

1 around. And you'll hear -- people heard Angie say that she
2 was saying B [REDACTED] my new daughter. B [REDACTED] my angel.
3 B [REDACTED] is my perfect daughter, my new perfect daughter. And
4 you have to understand what those words mean, just not in
5 their literal sense, but the way they could affect a man who
6 you'll hear has grandkids that are all profoundly special
7 needs, and Ricky loved them, and he played with them.

8 And you'll hear that he told Angie you need to go see
9 them, they need to see you. But when she would compare
10 B [REDACTED], the perfect daughter, the new daughter, the angel,
11 the perfect angel, my new family, my new daughter, I want
12 you to understand the effect that could have on a man like
13 Ricky Blackwell, and what they said happened happened.

14 She brought B [REDACTED], B [REDACTED] over again, and Ricky wanted
15 to talk to Angie. You'll hear he wanted to talk to her and
16 she didn't want to talk to him. You'll hear she said some
17 mean things. We saw how the last time she used mean words
18 how it moved him to try to kill himself, and she said some
19 more mean things that day.

20 I want to come back to you eventually and ask you --
21 you're not gonna pause long on is he guilty. I'm not here
22 for that.

23 Those six seconds, do they represent him as a man?

24 They don't.

25 Is he -- do they represent him as a evil person?

Angela Davis - Direct examination
By Solicitor Barnette

1 not in the driveway. So, I kept going. And as I kept
2 going, when I got right there at the curve, Ricky jumped out
3 and flagged me down, and he said I thought you was picking
4 up the boys and I said I was, but Heather's car's not there.
5 She's gone. He said she's gone to the store. She'll be
6 back in a few minutes. Mark's got the boys ready and
7 they're waiting on you.

8 Q Okay. And who is Mark?

9 A My son-in-law.

10 Q Okay. Go ahead, ma'am.

11 A And so I put the car in reverse and I turnt and I
12 backed the car all the way up past Heather's driveway to
13 where I could turn back in facing the front of the trailer.

14 Q Okay. what happened after that, ma'am, and take your
15 time.

16 I understand.

17 A when we first pulled up I noticed a little dog that we
18 had always had around there and he was old and I knew he
19 would bite her. So, I turned around and looked at her and I
20 said B [REDACTED], honey, don't get out of this car until I get
21 this dog cause I don't want you to get dog bit. She said
22 okay. So, I got out of the car and I reached down and got
23 the dog, but when I turned back around he had her.

24 Q when you mean he, who are you talking about, ma'am?

25 A Ricky. How he even got there I don't know, but he got

Angela Davis - Direct examination
By Solicitor Barnette

1 her, and, and I kept telling him Ricky, please let that baby
2 go.

3 Q If you would, could you show the jury how he had her
4 held on me?

5 Do you feel comfortable doing that, ma'am?

6 THE COURT: solicitor, I'm gonna take a short break and
7 let the witness compose herself.

8 I'll ask the jury to step back to the jury room. Do
9 not begin any discussions until I've asked you to do so
10 about this case.

11 You may retire to the jury room.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Court will be in recess for about ten
15 minutes.

16 I'll instruct the witness though not to discuss the
17 subject or the testimony that you're about to give with
18 anyone.

19 Thank you, ma'am.

20 Court's in recess.

21 (WHEREUPON, a short recess was taken at this time.)

22 THE COURT: Ma'am, come forward again. Resume the
23 stand please.

24 (Witness complies.)

25 THE COURT: Thank you.

Angela Davis - Direct examination
By Solicitor Barnette

1 All right, ma'am. Are you ready to go forward again?

2 THE WITNESS: Yes.

3 THE COURT: All right. Bring the jury in.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: Thank you, Mr. Ruth.

7 Your witness, Mr. Barnette.

8 SOLICITOR BARNETTE: May it please the Court, Your
9 Honor.

10 THE COURT: Yes, sir.

11 CONTINUED DIRECT EXAMINATION

12 BY SOLICITOR BARNETTE:

13 Q Ma'am, I think we were to the point where the defendant
14 had grabbed B [REDACTED].

15 If you would, could you show the jury how he grabbed
16 her on me?

17 A Yes.

18 Q If you would -- I'll get down on my knees. If you
19 would, come down.

20 A (witness comes down from the stand.)

21 Like this.

22 Q You got to talk louder. She's got to be able to hear
23 you.

24 A It's like this.

25 Q Okay. If you would, ma'am, please have a seat.

Angela Davis - Direct examination
By Solicitor Barnette

1 A (Witness returns to the stand.)

2 Q And what was you saying to him, ma'am, when he grabbed
3 a hold of B [REDACTED]?

4 A Please let her go. Please.

5 Q And what did, what did he have his hand to her head?

6 A The gun.

7 Q And did he say anything to you while you was talking to
8 him?

9 A Yes, he was walking around the car and I was screaming
10 let her go, Ricky, please, it's me you want, take me, and
11 let Heather take her home, and he said no and he took the
12 gun and pointed it toward -- on the car, and he said you've
13 pushed this too far. You did this. You tell me what Bobby
14 thinks of this, and then the gun went off, and then it went
15 off again.

16 Q what happened next, ma'am?

17 A And then when I seen him start to lay her on the
18 ground, all I know to do to get somebody in there was to run
19 and get, get a phone, call help, somebody.

20 Q And where did you run to, ma'am?

21 A I ran into my daughter's house and I dialed 9-1-1, but
22 my handicapped granddaughter was screaming so loud that I
23 couldn't make ways of hearing them good or them hearing me
24 good. So, I got frustrated and dropped the phone, and I ran
25 out the back-door of my daughter's trailer still with my

Angela Davis - Cross-examination
By Mr. McGuire

1 I understand his opening. I disagree with it. I could
2 maybe understand that. I do not understand this. This is a
3 purposefully thing trying to taint a little girl through her
4 dad that has nothing to do with this and that's the reason I
5 made a motion in limine ahead of time, and I hope that notes
6 in that doctor's records.

7 THE COURT: Mr. McGuire.

8 MR. MCGUIRE: Judge, this is classic impeachment
9 evidence. It's classic bias. Obviously I have a very good
10 faith basis for asking all these questions. I have records.
11 I can prove that Ms. I guess Davis now, Angie Davis, has
12 been untruthful with this Court and this jury. I intend to
13 prove that.

14 And also I can prove bias because in her sessions with
15 her counselor, she indicated she didn't want to come to
16 Court. She was very much afraid of the Hells Angels, that
17 Bobby's, Bobby's father was involved with them, and that she
18 feared that the motorcycle gangs would not leave her alone.

19 THE COURT: Has she made a statement about that in
20 Court today?

21 MR. MCGUIRE: No, sir.

22 SOLICITOR BARNETTE: Your Honor, there's another point
23 too. I don't mean to interrupt, how did he get the medical
24 records?

25 How did he get them without her permission?

Angela Davis - Cross-examination
By Mr. McGuire

1 THE COURT: I'm, I'm not into that at this point in
2 time, but I am -- this is not an inconsistent statement that
3 she made today, is it?

4 MR. MCGUIRE: They are in -- her, yes. Her statement
5 with regard to---

6 THE COURT: Now, she hadn't -- when she testified, I
7 heard no testimony about those subjects---

8 MR. MCGUIRE: Are you---

9 THE COURT: ---thus far.

10 MR. MCGUIRE: Are you talking about motorcycles,
11 motorcycle gangs?

12 THE COURT: Yes, sir.

13 MR. MCGUIRE: Oh.

14 THE COURT: That's what I'm talking about.

15 MR. MCGUIRE: She's not, she's not testified about
16 those. I agree with you.

17 THE COURT: So, what are you impeaching?

18 MR. MCGUIRE: I believe that I'm allowed to ask her
19 about her prior statements to Ms. Musick where---

20 THE COURT: That are, that are not relevant to this
21 case.

22 MR. MCGUIRE: They're extremely relevant to this case.

23 THE COURT: How?

24 MR. MCGUIRE: Because she -- because I need to be able
25 to develop a record from which to argue that her fear, and

1 Okay. Now, I do want to clarify my ruling in regards
2 to striking the question that was asked yesterday and maybe
3 expand on that ruling before we take up the question that
4 the State has raised.

5 Yesterday, a question was asked in which the question
6 referred to the Hells Angels biker, biker gang. We had had
7 discussions in form -- in the form of a motion in limine
8 previously as well as other discussions concerning the
9 possibility that information concerning biker gangs might be
10 introduced, but never the use of that particular word or a
11 reference to that particular biker gang, and the way that it
12 was used, it would be my ruling as well that the
13 probative -- the prejudicial effect of that reference would
14 outweigh its probative value in the way -- in that respect
15 because I believe the issue involved was the credibility of
16 the witness. The identity of the biker gang, I'm not sure,
17 has anything to do with whether or not the witness may of
18 talked about a biker gang or any particular biker gang.

19 So, my ruling would include the fact that a reference
20 to that particular biker gang, since it had never been
21 mentioned in Court before that time, would be that the, the
22 prejudicial effect of that reference would outweigh any
23 probative value as to the credibility of the witness who was
24 testifying. So, that would be an additional basis for my
25 ruling.

1 are obviously untrue, would -- his right under the
2 Constitution would trump the privacy interest of Ms. Davis.

3 THE COURT: There's a statute---

4 MR. MCGUIRE: I understand.

5 THE COURT: ---that says she has a privilege.
6 You acknowledge that?

7 MR. MCGUIRE: Oh, I do. Of course.

8 THE COURT: Okay.

9 MR. MCGUIRE: I was just saying the Constitutional
10 right of the defendant trumps---

11 THE COURT: Do you, do you have a case where that --
12 let's say any, defeats any privilege?

13 MR. MCGUIRE: Alaska v. Davis.

14 THE COURT: Alaska v. Davis?

15 MR. MCGUIRE: Yes, sir, United States Supreme Court---

16 THE COURT: Do you have a copy of that?

17 MR. MCGUIRE: I usually -- yes, sir.

18 THE COURT: Why was that -- why was this not sent to me
19 last night?

20 MR. MCGUIRE: well, I pulled it, I pulled it very late
21 and---

22 THE COURT: well, I was reading late last night.

23 MR. MCGUIRE: And also I didn't know -- I didn't think
24 it went directly to the issue of the, the records. More in
25 light of the ability to cross-examine Ms. Davis.

1 THE COURT: Thank you.

2 All right. Court will be in recess while I take a look
3 at this.

4 (WHEREUPON, a short recess was taken at this time.)

5 THE COURT: All right. I have reviewed the only
6 authority given to me by the defense in this matter, and
7 that is Davis versus Alaska.

8 Davis versus Alaska involved a situation where the
9 State law provided that juvenile records were sealed, were
10 not disclosable. The defendant wished to use a witness in
11 the case of juvenile records, and the fact the juvenile was
12 incarcerated, in cross-examination, in an effort to show
13 that the individual was somehow compromised in his honesty,
14 the State, in an effort to seek some type of favor from the
15 State, and, in Davis, the Court did a balancing test
16 balancing the defendant's right to full and free
17 cross-examination against the witness' right to have his
18 juvenile record sealed, and the Court, in that case, found
19 that the defendant's right of -- to full and free
20 cross-examination outweighed the State's interest in keeping
21 that particular information confidential.

22 I have located the case of Jaffee versus Redmond, 1996
23 case -- by the way, Davis was decided in 1974.

24 In Jaffee versus Redmond, that is the case in which the
25 U.S. Supreme Court established the federal privilege against

1 disclosure of information given to mental health
2 professionals, and, in that case, that Court specifically
3 stated we reject the balancing component of the privilege
4 implemented by, they were talking about the Lower Court, in
5 a small number of states. They indicated that the making,
6 the promise of confidential, confidentiality contingent upon
7 a Trial Judge's later evaluation of the relative importance
8 of patient's interest and privacy and the evidentiary need
9 for disclosure would eviscerate the effectiveness of a
10 privilege.

11 So, the U.S. Supreme Court, in Redmond, rejected the
12 balancing test when dealing with the privilege involving the
13 exact type of communications we have in this case. I did
14 not find any, any authority which has strayed from that
15 position given by the U.S. Supreme Court in 1996.

16 Therefore, I do find that Ms. Davis has the right to
17 assert the privilege. I've heard no challenge to the
18 privilege to the effect that she, in anyway, waived it or
19 that any of the exceptions that are enumerated under the
20 statute, which is Statute Number 44-22-90, and there are
21 seven circumstances under which the privilege would not
22 apply, I've heard no argument that any of those exceptions
23 apply in this case either.

24 Anything further from the State in this matter?

25 SOLICITOR BARNETTE: Nothing further from the State,

Angela Davis - Proffered testimony
By Mr. McGuire

1 gangs were scaring you based on what you saw on the
2 Internet.

3 Is that true or not true?

4 A I don't even look at the Internet.

5 Q Okay.

6 THE COURT: The source of that question is?

7 MR. MCGUIRE: Statements she's made in the past.

8 THE COURT: Well to, to who is my question?

9 THE WITNESS: What little bit I've ever seen---

10 THE COURT: Ma'am?

11 THE WITNESS: ---on the Internet---

12 THE COURT: Ma'am, ma'am, let me talk for a second.

13 Let me talk for a second. Thank you.

14 Said to who?

15 MR. MCGUIRE: Well, Ms. Musick.

16 THE COURT: Beg your pardon?

17 MR. MCGUIRE: Ms. Musick.

18 THE COURT: I've already made a ruling on that.

19 MR. MCGUIRE: And I'm not asking her about the
20 relationship.

21 THE COURT: I've made a ruling that she has a right to
22 claim a privilege in those things which she has claimed, and
23 I'll direct you not to use that information in and fashion,
24 even in a proffer. She has a privilege and I have ruled
25 that she has. You offered me no evidence to indicate that

Angela Davis - Proffered testimony
By Mr. McGuire

1 she didn't.

2 MR. MCGUIRE: I---

3 THE COURT: You understand my ruling?

4 MR. MCGUIRE: Yes, sir.

5 THE COURT: Good. Let's move on.

6 MR. MCGUIRE: Based on that, I've got nothing further
7 for you, ma'am.

8 THE COURT: Do you wish to follow-up with any
9 questions, Mr. Barnette?

10 SOLICITOR BARNETTE: No, sir. Thank you.

11 THE COURT: All right. Mr. McGuire, you've made a
12 proffer.

13 what information, from the proffer, do you wish to use?

14 MR. MCGUIRE: I would -- now these statements become
15 inconsistent with statements made before to Ms. Musick. So,
16 I would just renew my motion to be able to use the records
17 from Spartanburg Area Mental Health---

18 THE COURT: And I've made my ruling.

19 MR. MCGUIRE: Sure. But that's for the record, I'm
20 just --.

21 THE COURT: I've made my ruling.

22 MR. MCGUIRE: I understand and---

23 THE COURT: I don't think I can be any clearer, Mr.
24 McGuire, that I've made a ruling on those matters. She has
25 claimed a privilege. The statute grants her a privilege.

THE STATE OF SOUTH CAROLINA

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ATTACHMENT 2

1 rule, you know, on the probative value. I think it would be
2 premature.

3 THE COURT: All right. well, I will ask the solicitor
4 though to reread the Torres case and the Supreme Court's
5 admonition concerning photographs, and since I was involved
6 in that case, I will certainly heed their warnings.

7 SOLICITOR BARNETTE: Yes, sir, I do remember that, yes,
8 sir.

9 THE COURT: All right. Thank you. And I will preserve
10 your right to object to the photographs at the time they
11 attempt to introduce them.

12 MR. MCGUIRE: Thank you, Your Honor.

13 THE COURT: Next is a motion for disclosure of
14 psychiatric history of State's witnesses.

15 MR. MCGUIRE: Yes, sir.

16 THE COURT: Yes, sir.

17 MR. MCGUIRE: I believe that one of the State's
18 witnesses has been hospitalized, and that would be Angie
19 Blackwell, and I can request those records at this time.

20 SOLICITOR BARNETTE: Your Honor, obviously we'd object.
21 As you know, our written motion, you've got all kinds of
22 statutes. You got HIPA. You got everything concerning
23 that. I don't see any relevance to this from that
24 standpoint.

25 THE COURT: Are we talking about a psychiatric

1 and I'm -- I can tell you that there's -- there was, there
2 was a history of some antagonizing behavior leading up to
3 the event. She can express some, some thoughts about that
4 fact.

5 THE COURT: First of all, does the State even have this
6 information?

7 SOLICITOR BARNETTE: First thing, we don't have it,
8 number one. We don't.

9 THE COURT: Yeah.

10 SOLICITOR BARNETTE: You know, obviously it's news to
11 us if he's got that information from that standpoint.

12 But under Section 16-3-1505, he's not suppose to have.
13 I mean you have to have a hearing in order to get that
14 information on anybody's mental health records, and it would
15 be a violation of HIPA and everything else from that, and,
16 Your Honor, I think the post is the key. I mean it don't
17 have anything to do with nothing prior to this event, and,
18 obviously, you know, she's been traumatized, I guess, from
19 that. To see something like that, I can't imagine.

20 So, you know, we definitely object to this cause I
21 think it would be prying into a key witness from there, and
22 be -- I think it's used basically to intimidate her to try
23 to find -- I don't see any relevance to this, and if it's
24 relevant, it would be highly prejudicial in this case.

25 THE COURT: well, I'm not sure I can order the State to

1 produce something they don't have.

2 MR. MCGUIRE: And I would agree with that, and I filed
3 it, obviously, not knowing what they may of had in their
4 possession and not turned over. I'll put everybody on fair
5 notice that I'm gonna issue another subpoena, and I don't
6 know if the prosecution will ask them to not comply like the
7 sheriff. But that's, that's our intent.

8 THE COURT: We'll see what happens.

9 MR. MCGUIRE: Fair enough.

10 THE COURT: All right.

11 SOLICITOR BARNETTE: Well, Your Honor, I think, under
12 HIPA, he can't do it that way. I mean that's -- I mean---

13 THE COURT: Well, again, I'm gonna let him handle his
14 case.

15 SOLICITOR BARNETTE: I know. I understand.

16 THE COURT: But right now you're telling me you don't
17 have that information---

18 SOLICITOR BARNETTE: No, sir, I don't.

19 THE COURT: ---in your files. It's not in your
20 possession. So, therefore, I'll deny the motion on the
21 basis of the State doesn't have the information.

22 SOLICITOR BARNETTE: Yes, sir. Thank you, Your Honor.

23 THE COURT: Now, the next one is a motion to suppress
24 the statements on Jackson v. Denno. We took that out of
25 order.

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ATTACHMENT 3

DEATH PENALTY CASE

**STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG**

STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	Indictment No. 2009-GS-42-3610
)	
v.)	Warrant No.s MO88424, 34
)	
RICKEY LEE BLACKWELL,)	
)	
Defendant.)	

**MOTION FOR DISCLOSURE OF PSYCHIATRIC HISTORY OF
STATE'S WITNESSES**

COMES NOW, Rickey Lee Blackwell, through undersigned counsel, and respectfully moves this Court for an Order directing the State to disclose to the defense the psychiatric and behavioral history of certain witnesses. This motion is predicated upon the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, §§ 3, 9, 10, 11, 12, 14 and 15 of the Constitution of the State of South Carolina, international treaties and customary international law, as well as statutory and jurisprudential authorities cited below.

In support, counsel states:

Mr. Rickey Lee Blackwell is on trial for his life. The State has announced its intention to seek the execution of Mr. Rickey Lee Blackwell by lethal injection or electrocution. "The fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special 'need for reliability in the determination that death is the appropriate punishment' in any

capital case.” Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (citations omitted). Furthermore, when a defendant's life is at stake, a court must be “particularly sensitive to insure that every safeguard is observed.” Gregg v. Georgia, 428 U.S. 153, 187 (1976). Our system of justice must go “to extraordinary measures to ensure that the prisoner [facing the possibility of being] sentenced to be executed is afforded process that will guarantee, as much as is humanly possible, that the sentence was not imposed out of whim, passion, prejudice, or mistake.” Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring) (emphasis added). These “extraordinary measures” must be taken at both stages of any capital trial. Beck v. Alabama, 447 U.S. 625, 638 (1980).

The State may intend to rely upon the testimony of certain witnesses who have been incarcerated in the State prison system, have been on probation or parole, or committed to a mental health facility. One or more of said witnesses may have a history of psychological and behavioral instability.

The defense is entitled to be made aware of any information which would bear upon the credibility of the State's witnesses and/or be of an impeaching nature to insure due process and the adequate preparation of a defense. Giles v. Maryland, 386 U.S. 66 (1967); United States v. Carlisi, (1993 U.S. Dist. LEXIS 12007) (Ill. D.C.) (finding that Defendant was entitled to disclosure of all evidence that would tend to exculpate him or that cast doubt on the credibility of the state's witnesses and was material to the outcome of the trial). Pennsylvania v. Ritchie, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987) (affirming the lower court's judgment remanding the case for the court to determine if the contents of the confidential file contained material, exculpatory evidence which would warrant a new trial.

The accused accordingly demands disclosure of the following records of all prosecution witnesses:

- (a) all arrest, conviction, and adult and juvenile criminal offense records;
- (b) all records of juvenile detention, jail, prison, and parole or probation terms;
- (c) all records of any law enforcement activity pertaining to pending charges
- (d) Records disclosing the existence of significant mental or psychological impairment, especially bearing on truthfulness and competency, found in state hospital and other institutional records. Pennsylvania v. Ritchie, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987).

The information requested in this motion is essential to insure Mr. Rickey Lee Blackwell' rights, including his right to a fair hearing, his right of confrontation, his right to prepare a defense in his own behalf, and his right to effective assistance of counsel and due process of law guaranteed by the Constitution of the United States and the Constitution of the State of South Carolina.

WHEREFORE, Rickey Lee Blackwell respectfully requests that this Court:

1. Order the Solicitor's office to disclose to the defense the State witnesses' psychiatric and behavioral history including, but not limited to, disciplinary incidents while in State custody, arrests by law enforcement officers whether or not followed by prosecution or conviction, and interviews with mental health personnel of any type; and

2. Grant such other and further relief as this Court
deems appropriate.

Dated this _____ day of _____, 2013.

Respectfully Submitted,

William Sean McGuire
State Bar No. 9722
Attorney, Capital Trial Division
SCCID
PO Box 11433
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA

V.

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ATTACHMENT 4

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
FOR THE SEVENTH JUDICIAL CIRCUIT

The State,)
)
v.)
)
Ricky (Rickey) Lee Blackwell, Sr.,)
)
)
Defendant.)
_____)


**STATE'S RETURN
TO DEFENDANT'S DISCOVERY MOTION
FOR DISCLOSURE OF PSYCHIATRIC
HISTORY OF STATE'S WITNESSES**

Indictment No(s): 2009-GS-42-3609-10
Warrant No(s): M088424 and 434

The Defendant moves for the State to disclose the psychiatric history of State's witnesses. The State does not have such histories nor is it within the province of the Solicitor to obtain them.

The Defendant seeks to evade discovery while asking the Solicitor to invade the privacy of possible witnesses and then provide to him whatever might be there. The witnesses are protected under State law by statutes whose purpose is to protect them from this type of abuse. S.C. Code Ann. Section 16-3-1505 (Legislative Intent, "In recognition of the civic and moral duty of victims of and witnesses to a crime to cooperate fully and voluntarily with law enforcement and prosecution agencies...and to implement the rights guaranteed to victims in the Constitution of this State, the General Assembly declares its intent, in this article, to ensure that all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity; that the rights and services extended in this article to victims of and witnesses to a crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less visible than the protections afforded criminal defendants"), and under federal law by HIPPA.

The State objects to the motion and asks that it be denied.



Barry J. Barnette, Solicitor
Seventh Judicial Circuit

Spartanburg, SC
October 23, 2013

Spartanburg, SC
February 17, 2014

M. HOPE BLACKLEY
2014 FEB 19 AM 11:20
CLERK OF COURT
SPARTANBURG COUNTY

Barry J. Barnette, Solicitor
Seventh Judicial Circuit

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 FEB 18 AM 10:12
M. HOPE BLACKLEY