

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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FEB - 9 2015

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

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

RICKY LEE BLACKWELL,

APPELLANT

APPELLATE CASE NO. 2014-000610

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

RETURN TO
MOTION TO STRIKE DESIGNATION OF MATTER; AND

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

Undersigned counsel, making its return to the state's motion to seal or in the alternative strike makes this return to the Court:

1. Appellant's first issue in his initial brief of appellant filed January 8, 2015 with this Court is:

The court denied appellant his constitutional right to confront and cross-examine the state's most critical witness, Angela Davis, to show she was

lying, by way of admissions she made to Counselor Margaret Musick about being afraid of the motorcycle gangs because of internet postings, fire bombings, and threats, where Davis' bias to slant her testimony in the direction of this having been a premeditated murder so she could avoid retaliation was a significant jury issue.

2. Prior to trial, defense counsel obtained a court order from the trial judge, which was filed on February 28, 2014, for the production of medical and mental health records of appellant's wife, Angela Diane Blackwell Davis, the only eyewitness to the homicide. That court order is being filed under seal simultaneous with this return, and was cited in the initial brief of appellant as "Filed under seal with this court." Brief of Appellant at 10.

3. In this court order, the trial judge noted that Appellant Blackwell had been served with a notice that the state was seeking the death penalty in this case. The order also noted that Angela Blackwell Davis was a witness in this case and that the records were necessary "to the adequate preparation of the defense. . . ." Brief of Appellant at 10. The order was seemingly issued by the judge pursuant to South Carolina Code Section 44-22-100(2), and the records were to be released to the Office of Indigent Defense, trial counsel. (See Court Order filed under seal with this return).

4. The defense argued at trial, and now argues on appeal, that the mental health records demonstrated Angela Blackwell's bias, and they showed she was afraid of the Hells Angels or other "sister motorcycle gangs." This contradicted her proffered testimony that she loved bikers. Her fear of bikers is a very significant fact in this case since Angela Davis had a compelling motive to slant her testimony. She wanted the jury, and indeed the community, to believe that appellant killed the victim without Angela Davis provoking him. The counter view of the evidence, and the very likely truth was that Angela Davis was using the victim, Brooke, to taunt the mentally retarded appellant about new her life with motorcycle biker boyfriend, Bobby Center, and her new "perfect"

daughter, Brooke.¹ If Angela provoked the slaying, she would have real reason to fear retaliation from Center's biker associates.

5. The Blackwell mental health records were legally obtained as follows:
 - a. Appellant filed a motion for disclosure of psychiatric history of state's witnesses. (See Motion filed under seal with this Court).
 - b. The solicitor filed a return on February 19, 2014 stating it did not have to disclose the psychiatric history of state's witnesses, nor was it within the province of the solicitor to obtain them. (See State's Return filed under seal with this Court).
 - c. At the November 6, 2013 pretrial hearing the defense argued it was entitled to have the solicitor produce these records. The defense knew Angela Blackwell had been hospitalized, she had made certain highly prejudicial claims about appellant that were quoted in the newspaper, and the defense believed there may be information in the counseling records showing she was not telling the truth. The solicitor stated that he did not have the records, and he claimed a hearing would have to be held to obtain them. Supp. Tr. 74, l. 17 – 77, l. 1. Defense counsel stated he had no way of knowing if the state had the records in their possession until this hearing was held. He then stated: "I'll put everybody on fair notice that I'm gonna issue another subpoena, and I don't know if the prosecution will ask them to not comply like the sheriff. But that's, that's our intent. The solicitor responded that he did not think appellant can "do it that way." The judge ended the matter by stating: [I]'m gonna let him handle his case." The solicitor acknowledged that he understood the judge's ruling. Supp. Tr. 76, l. 5 – 77, l. 14.

¹ Appellant and Angela had several special needs children.

- d. A subpoena was later issued for the Department of Mental Health records on January 21, 2014.
- e. On January 22, 2014 the Department of Mental Health (DMH) issued a form letter stating that it could not release the records without an authorization unless a **“court order is secured meeting requirements of Section 44-22-100 (A)(2) . . .”**
- f. The trial judge then issued an ex parte order to produce the medical and mental health records which was signed on February 27, 2014, and filed on February 28, 2014. (See Court order filed under seal with this Court).
- g. The defense then obtained the Spartanburg Area Mental Health records pursuant to that court order, containing statements Angela had made to Margaret Musick.

6. In short, defense counsel put the parties and the judge on notice that he was going to issue a subpoena for the mental health records in this case. A subpoena was then issued, and the Department of Mental Health sent defense counsel a letter stating it could not release the records without an authorization unless a court order was secured. The defense then obtained a court order from the trial judge and forwarded it to the Department of Mental Health. The Department of Mental Health then complied with the court order and turned the mental health records over to the Office of Indigent Defense which was defending appellant.

7. Again, the Department of Mental Health records were obtained through a court order issued by the trial judge. These records that were needed to properly represent appellant at his trial. The trial judge’s refusal to allow appellant to make the records a court’s exhibit or even file them under seal has respectfully caused the present dilemma. These records are critical and necessary for appellate review in this death penalty case. Lead trial counsel for appellant on behalf of the Commission on Indigent Defense, William McGuire, has filed an affidavit under seal with this

Court attesting to the fact the mental health records filed with this Court under seal are the same records that he attempted to make a Court's exhibit, and then file under seal with the trial court.

8. As defense counsel argued, appellant had the constitutional right to confront and cross-examine Angela Blackwell Davis with these mental health records. He cited Davis v. Alaska, 415 U.S. 308 (1974) as the controlling precedent. Defense counsel distinguished Jaffee v. Redmond, 518 U.S. 1 (1996). Jaffee involved the United States Supreme Court in its supervisory capacity over the Federal District Court as it pertained to certain privileged documents in federal courts.

9. Jurors in the criminal justice system have the legitimate demand for "every man's evidence" in their search for the truth. State v. Good, 308 S.C. 313, 316, 417 S.E.2d 643, 645 (Ct.App. 1992).

10. The medical records reveal that Angela Blackwell Davis committed perjury during appellant's death penalty trial, and *this Court has unequivocally held it will not condone perjury*. State v. Brown, 296 S.C. 191, 193, 371 S.E.2d 523, 525 (1988).

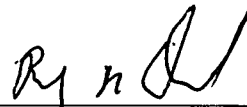
11. Since the mental health records in question were obtained by a court order, issued by the trial judge, that any claim of privilege by Angela Blackwell Davis must give way to the valid court order issued in appellant's defense. Further, even if the state could convince this court that the records obtained as a result of a court order were privileged, as trial counsel argued, that privilege would be trumped by appellant's constitutional right to confront and cross-examine this critical witness. See Davis v. Alaska, 415 U.S. 308 (1974).

12. Appellant does not object to the state's motion to seal the initial briefs of appellant and the initial brief of respondent. However, appellant objects to the remainder of the relief requested in the state's motion. This is a death penalty case, and the state's argument that it seeks to invoke on behalf of state's witness Angela Blackwell Davis must give way to appellant's right to present a complete defense, and to his right to meaningful judicial review in this case.

13. A contrary resolution here will set a dangerous precedent that a trial judge can evade appellate review of his or her refusal to admit evidence *in any case* by denying the proponent of the evidence the opportunity to proffer testimony or have documentary evidence sealed for review. The State is involved in a variety of litigation – it could readily wind up on the short end of this stick.

WHEREFORE, appellant does not object to the initial briefs in this case being filed under seal. Appellant vehemently objects to the remainder of relief requested by the state and asserts that such relief being granted for the state would deprive him due process of law, his right to present a complete defense, and his right to meaningful appellate review of his murder conviction, and his death sentence.

Respectfully submitted,



ROBERT M. DUDEK
Chief Appellate Defender

David Alexander
Appellate Defender

ATTORNEYS FOR RESPONDENT

This 9th day of February, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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RICKY LEE BLACKWELL,

APPELLANT

APPELLATE CASE NO. 2014-000610

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the return to motion to seal or in the alternative strike in the above referenced case has been served upon Melody J. Brown, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of February, 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of February, 2015.

Rhonda Demese Zawortz (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.

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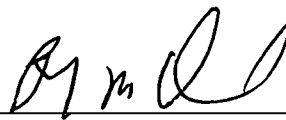
RICKY LEE BLACKWELL,

APPELLANT

APPELLATE CASE NO. 2014-000610

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the affidavit of William S. McGuire, Esquire in the above referenced case has been served upon Melody J. Brown, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of February, 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of February, 2015.

Rhonda Demaria Zofwirth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021