

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 FOR ACCESS TO SEALED ORDER RELIED UPON IN RETURN TO THE
STATE'S MOTION**

**In re: 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 of South Carolina, filed the above referenced motion on January 28, 2015. Appellant served and filed his return to the motion on February 9, 2015. Pursuant to Rule 240(f), SCACR, Respondent has five (5) days in which to make its reply. The reply is currently due to be served and filed on or before Tuesday, February 17, 2015. However, Respondent is hampered in making the reply as Appellant has relied in part upon an order from the trial judge which was not provided to the State at trial and apparently remains under seal. (See Return, p. 2). Appellant has filed a copy of the Order under seal with this Court. (Return, p. 2). Respondent

respectfully requests access to the sealed Order filed with the return. In support of this motion, Respondent would respectfully show the Court:

1. The State was clearly not privy to the request below for the witness's records, nor does it appear, for that matter, that the witness was involved. *Compare State v. Terry*, 339 S.C. 352, 529 S.E.2d 274 (2000) (hearing on State's motions for capital defendant's medical records and allowing disclosure where "the jury was required to assess Terry's character"). Having never seen a copy of the Order, or any specifics on the request, scope of release, or other requirements within the Order, Respondent is hampered in making a complete reply to the allegations in the Return. Respondent notes the trial judge found on the record that the records were privileged and could not be used which presents some tension in the facts currently available to Respondent. (Motion to Strike, p. 3 and attachments).

2. Respondent requests counsel for the State on appeal be allowed access to the Order and a copy of the Order. This includes representatives of the Office of the Attorney General and members of the Seventh Circuit Solicitor's Office, who will be jointly representing the State on appeal and writing the reply to the motion and appellate brief.

3. Respondent does not concede the propriety of the process at trial regarding the Order, but, respecting the fact the document was apparently sealed by the trial court, seeks permission, out of necessity and fairness, to view the document relied upon in the Return. Respondent will move to unseal the document should it become necessary and/or does not reflect any privileged information. Respondent is cognizant that the Order may reveal privileged information which it has attempted to protect in this appeal, thus lacks ability to make a formal motion to unseal until the document may be viewed and considered.

4. Undersigned counsel for Respondent has consulted with appellate counsel, Mr. Dudek, who advised that he does not consent to this motion.

5. Respondent respectfully requests the Court hold the time limits for reply in abeyance pending the resolution of this motion and allow the reply to be filed within five (5) days of an order granting or denying the instant request.

THEREFORE, Respondent respectfully requests access to the sealed Order.

Respectfully submitted,

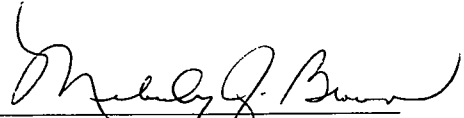
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BY: 
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February 13, 2015.
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

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The State of South Carolina, Respondent,
v.
Ricky Lee Blackwell, Appellant.

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PROOF OF SERVICE

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

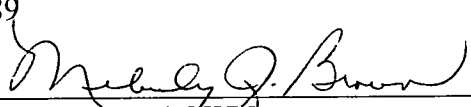
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THE BRIEFS AND THE RECORD ON APPEAL AND REQUIRE APPELLANT TO FILE
AN AMENDED INITIAL BRIEF**

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

Robert M. Dudek, Chief Appellate Defender
David Alexander, Appellate Defender
South Carolina Commission on Indigent Defense
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This 13th day of February, 2015.


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