

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of General Sessions

Honorable J.C. Nicholson, Jr., Circuit Court Judge
Trial Court Case No. 2010GS1007730, 2010GS1007731
Appellate Case No. 2013-000179

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APR 29 2015
SC Court of Appeals

The State of South Carolina,

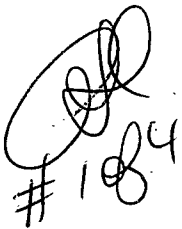
Respondent,

v.

Venancio Diaz Perez,

Appellant.

MOTION TO SEAL



ALAN MCCRORY WILSON
Attorney General

AMIE L. CLIFFORD
Special Assistant Attorney General
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S.C. Bar No. 1285

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ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR APPELLANT

The undersigned counsel respectfully asks this Court to seal the Record and all but the final briefs and opinion in this matter for the purpose of preventing disclosure to or use by any person other than the parties, counsel for the parties, and this Court and its staff for purposes of the resolution of this appeal. In support of this request, the undersigned counsel states as follows.

I.

This case is from convictions for lewd act upon a minor and assault and battery of a high and aggravated nature based upon the sexual assault of a minor. Presented at trial and included in the Record on Appeal is testimony related to that assault and testimony of the sexual assault of another minor that was admitted under Rule 404 (b), SCRE.

II.

In an effort to comply with *Re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings*, Appellate Case No. 2013-002681 (Order issued April 14, 2014), the Record on Appeal was redacted to change the actual names of the minor victim, the minor 404 (b) witness, and another minor referenced to by name in the testimony to Minor 1, Minor2, and Minor 3.

III.

At trial, the mothers of the victim and the 404 (b) witness testified. The Record on Appeal contains the full names of both women.

IV.

This morning, the Court issued an unpublished opinion in this matter (Op. No. 2015-UP-217). While the victims are not identified by name in the opinion, the Court includes the full names of each of the minors' mothers and each woman is identified as the mother of one of the minors such that the identity of the minors is readily apparent.

V.

The undersigned counsel overlooked the significance of the full names being included in the Record on Appeal until this morning when she read the Court's opinion.

VI.

The undersigned counsel for the State has written a letter to the Clerk of Court requesting that the opinion be redacted to remove the full name of the mothers of both the victim and 404 (b) witness to ensure that the identity of the two minor children is protected.

VII.

Sealing the Record on Appeal and all documents, but the final briefs, and opinion of this Court will ensure that the identity of the minor children is protected.

WHEREFORE, for all of the foregoing reasons, the undersigned respectfully requests this Court to seal the Record on Appeal and all documents, but the final briefs and opinion of this Court; if the Clerk of Court cannot act upon Respondent's request for redaction of the opinion in this matter, that the Court redact the opinion to remove the full names of the two women; and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

ALAN MCCRORY WILSON
Attorney General

AMIE L. CLIFFORD
Special Assistant Attorney General
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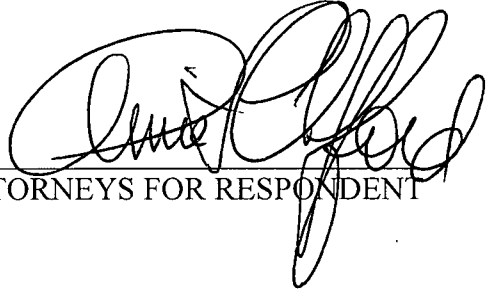
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April 29, 2015

Columbia, South Carolina

BY:

ATTORNEYS FOR RESPONDENT



THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHARLESTON COUNTY

Court of General Sessions
J.C. Nicholson, Circuit Court Judge

Court of Appeals Case No. 2013-000179

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SC Court of Appeals

The State of South Carolina,

Respondent,

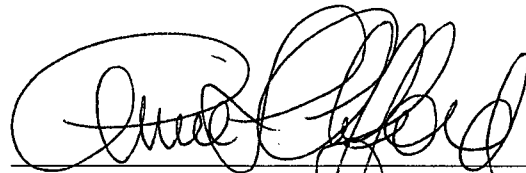
v.

Venancio Diaz Perez,

Appellant.

PROOF OF SERVICE

I certify that I have today served a copy of the Motion to Seal on Appellant, Venancio Diaz Perez, by depositing such in the United States Mail, first class postage prepaid, addressed to his attorney of record, Jason Scott Luck, Esquire, Seibels Law Firm, P.A. 127 King Street, Suite 100, Charleston, South Carolina 29401, and by depositing one copy of each in the United States Mail, first class postage prepaid, addressed to his co-counsel, Robert M. Dudek, Chief Appellate Defender, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211.



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April 29, 2015
Columbia, South Carolina



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

April 29, 2015

Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *State v. Venancio Diaz Perez* (Appellate Case No. 2013-000179)

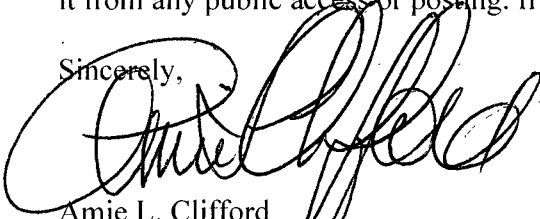
Dear Ms. Kitchings:

I am writing to request that the Court's unpublished opinion in the above-referenced case issued this morning (Op. No. 2015-UP-217) be redacted to remove information identifying the minor sexual assault victims. While the victims are not identified by name, the Court includes the full names of each of the minors' mothers and each woman is identified as the mother of one of the minors such that the identity of the minors is readily apparent.

I understand from our brief telephone conversation this morning that the Supreme Court's Order (Re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, Appellate Case No. 2013-002681 (April 14, 2014)) only specifically requires that the name of a minor sexual assault be redacted and replaced with "victim," "child," or similar term. However, the intent of the Court in issuing the order is clearly to protect the identity of such victims. In cases other than when the victim is the child of the defendant and that fact is relevant to the issues involved, including the full name of a minor victim's parent when identifying that person as the parent in an appellate opinion seems to violate a minor victim's privacy interest in the same manner as when the minor's name is used.

I appreciate your consideration of my request to redact the opinion and, until such is done, to remove it from any public access or posting. If this request requires a motion, please let me know.

Sincerely,



Amie L. Clifford
Special Assistant Attorney General
aclifford@cpc.sc.gov
S.C. Bar No. 1285

The Honorable Jenny Abbott Kitchings
April 29, 2015
Page 2

cc: Jason Scott Luck, Esquire, Counsel for Appellant
Robert M. Dudek, Chief Appellate Defender
Assistant Deputy Attorney General Salley W. Elliott
Ms. Trisha Allen, Victim Services



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ALAN WILSON
ATTORNEY GENERAL

April 29, 2015

Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *State v. Venancio Diaz Perez* (Appellate Case No. 2013-000179)

Dear Ms. Kitchings:

Enclosed for filing, please find the original and fourteen (14) copies of the State's Motion to Seal served on Appellant in the above-referenced appeal. I have also enclosed the original Proof of Service indicating service of the Motion.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Amie L. Clifford
Special Assistant Attorney General
aclifford@cpc.sc.gov
S.C. Bar No. 1285

Enclosure

cc: Jason Scott Luck, Esquire (with enclosure)
Robert M. Dudek, Chief Appellate Defender (with enclosure)
Assistant Deputy Attorney General Salley W. Elliott
Ms. Trisha Allen, Victim Services (w/enclosure)



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SC Court of Appeals

The Honorable Jenny A. Kitchings
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State v. Venancio Diaz Perez
Appellate Case No. 2013-000179