

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

Appeal from Aiken County  
The Honorable Michael G. Nettles, Circuit Court Judge JUL 15 2015

**SC Court of Appeals**

Appellate Case No. 2013-000568

STATE OF SOUTH CAROLINA

Respondent,

v.

BARRY EUGENE LAFAVOR,

Appellant.

**RETURN TO MOTION TO TRANSPORT AND UNSEAL COURT EXHIBIT**

Respondent, by and through undersigned counsel, making return to the motion to transport and unseal a sealed exhibit would respectfully show unto this Court:

1. Appellant was charged with second degree criminal sexual conduct with a minor, two counts of third degree criminal sexual conduct with a minor and criminal solicitation of a minor. He was represented by Michael Routzong, Esquire, in the circuit proceedings.

2. Appellant proceeded to trial on June 26, 2013. Prior to trial, Appellant subpoenaed the records of the South Carolina Department of Social Services (DSS) respecting the child victims' family. It also appears that DSS moved to quash the subpoena. A pretrial hearing respecting

Appellant's access to the DSS records was held on May 21, 2013, before the Honorable Doyet A. Early, III. At the conclusion of the hearing, Judge Early ordered the DSS records to be provided to counsel for Appellant and the State for review. Appellant thereafter inquired about access to the records on June 18, 2013, and the records were made available to him on June 20, 2013. (See Exhibit 1 attached to Appellant's Motion, pp. 28 – 29). Judge Early issued a protective order filed June 19, 2013, allowing the records to be disclosed but, due to the sensitive and confidential nature of personal information contained in the records, restricted access to counsel for the parties and counsel's employees, investigators and experts. Judge Early also restricted use of the DSS records to Appellant's trial only and prohibited public display or possession of the records by the defendant or any other lay person. (See Exhibit 3 attached to Appellant's Motion). Judge Early further ordered that the records be collected after trial, sealed, and maintained by the clerk of court to protect the confidentiality of the records. Id. Judge Early additionally ordered that the records be opened only upon order of the court upon a showing of good cause. Id.

4. Appellant moved for a continuance when the case was called for trial asserting that he had insufficient time to conduct a review of the DSS documents. The Honorable Michael G. Nettles denied the motion for continuance but placed the documents under seal and made them part of the record as Court's Exhibit No. 2 for purposes of any later appeal. (Appellant's Exhibit 1, pp. 28 – 33; 184 - 185; 299 - 303).

3. After it initially appeared Court's Exhibit No. 2 (DSS records) was destroyed, this Court issued an order remanding the case to the court of general sessions to reconstruct the exhibit. Upon additional investigation by the Aiken County Clerk of Court, Court's Exhibit No. 2 was located and reconstruction was no longer necessary. An order so finding was issued by the trial judge and the

appeal is now pending before this Court. (See Exhibits 4 & 5 attached to Appellant's Motion).

4. Appellant moves for an order of this Court requiring the sealed DSS documents as contained in Court's Exhibit No. 2 to be transported to this Court and unsealed for inspection and review by appellate counsel for the parties. Appellant's counsel asserts the need to inspect the exhibit to determine whether any issue related to Appellant's request for a continuance should be included as part of Appellant's appeal.

5. Respondent does not oppose the request to have Court's Exhibit No. 2 transported by the Attorney General's Office or its designee and, based upon the particular, unique circumstances presented in this specific appeal, does not oppose an order requiring it to transport the exhibit prior to the filing of designations of matter by the parties.

6. As to Appellant's request to unseal Court's Exhibit No. 2 (DSS records) to allow for review and inspection by the counsel parties, Respondent does not oppose an order unsealing the exhibit to allow for inspection and review by this Court and to allow appellate counsel for the parties to review and inspect the exhibit at the Court of Appeals. Respondent submits that Court's Exhibit No. 2 must be otherwise maintained under seal by the South Carolina Court of Appeals due to the personal information contained therein, including personal identifying information as outlined in Judge Early's order and the contents of the exhibit must not be reproduced or divulged to any person not authorized to view the documents. (See Protective Order for DSS Records attached to Appellant's motion as Exhibit #3). The content of Court's Exhibit No. 2 (DSS records) should not be released to the South Carolina Appellate Court Case Management System (C-Track) or publically displayed in any manner, including appellate court briefs. Inspection and review should be limited to the purposes of this appeal only. If specific information contained in Court's

Exhibit No. 2 is included in briefs later submitted by the parties, the parties should move to file the briefs or pertinent portions under seal.

7. Respondent agrees and joins Appellant's request to hold the deadlines for this appeal in abeyance pending resolution of this motion.

WHEREFORE, Respondent does not oppose the motion to transport Court's Exhibit No. 2 (DSS records) to this Court. Respondent also does not oppose an order unsealing the exhibit for inspection at the Court of Appeals but limited solely to review and inspection by this Court and appellate counsel for the parties for purposes of this appeal. Respondent opposes reproduction of the exhibit and asks this Court to otherwise maintain and safeguard it from release to the public through the South Carolina Appellate Court Case Management System (C-Track) or in any other manner. Respondent also asks this Court to require the parties to file portions of any brief or other written document referencing specific information contained in Court's Exhibit No. 2 ( DSS records) under seal to protect the confidential nature of the information in the records. Respondent does not oppose the request to hold deadlines in abeyance pending resolution of the motion.

Respectfully submitted

ALAN WILSON  
Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

J. STROM THURMOND  
Solicitor, Second Judicial Circuit

BY: Salley W. Elliott  
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ATTORNEYS FOR RESPONDENT

July 15, 2015

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Appellant.

**PROOF OF SERVICE**

I, Angela Bennett, certify that I have served the Return to Motion to Transport and Unseal Court Exhibit on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, Lara M. Caudy, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 15<sup>th</sup> day of July, 2015.



ANGELA BENNETT  
Administrative Assistant

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Columbia, SC 29211  
(803) 734-3727



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JUL 15 2015

SC Court of Appeals

ALAN WILSON  
ATTORNEY GENERAL

July 15, 2015

The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

Re: The State v. Barry Eugene Lafavor  
Appellate Case N: 2013-000568

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Return to Motion to Transport and Unseal Court Exhibit along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott  
Senior Assistant Deputy Attorney General  
S.C. Bar No: 1871

SWE/ab  
Enclosures

cc: Lara M. Caudy, Esquire  
Ms. Trisha Allen