

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from Aiken County

DEC 02 2015

Michael G. Nettles, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BARRY EUGENE LAFAVOR,

APPELLANT

APPELLATE CASE NO. 2013-000568

MOTION TO SEAL ALL BRIEFS AND
THE RECORD ON APPEAL

Pursuant to S.C. Code Ann. § 63-7-1990 and Re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, S.C. Sup. Ct. Order dated April 15, 2014 (Shearouse Adv. Sheet No. 15 at 34), Appellant hereby moves for an order from this Court sealing all briefs filed or to be filed in this matter along with the Record on Appeal. In support of this motion, counsel submits the following:

1. On July 10, 2015, Appellant filed a Motion to Transport and Unseal Court's Exhibit No. 2, which contains South Carolina Department of Social Services (DSS) records pertaining to the minor complainants in this case as well as their minor siblings and their family. This exhibit was placed under seal by the circuit court during Appellant's trial.

2. On October 1, 2015, this Court issued an Order finding “the parties are entitled to have access to the records [Court’s Exhibit No. 2] while they prepare for the appeal.” However, the Court found it was “not necessary to transport the exhibit to this court at this time” and ordered the Clerk of Court for Aiken County to “make the exhibit available for inspection by counsel for Appellant and the State.” Thus, while the parties currently have access to the exhibit, Court’s Exhibit No. 2 remains under seal at the Clerk of Court Office in Aiken County.

3. Appellant has cited to confidential information pertaining to the minor complainants contained in Court’s Exhibit No. 2 throughout his initial brief and has designated Court’s Exhibit No. 2 to be included in the Record on Appeal.

4. “Public access to court records may be restricted in certain situations, such as **matters involving juveniles**, legitimate trade secrets, or information covered by a recognized privilege.” Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006) (emphasis added). “In deciding whether to seal or unseal a court record, the court must make specific factual findings, on the record, which weigh the need for secrecy against the right of access. The burden is on the party who seeks to overcome the presumption of access to show that the interest in secrecy outweighs the presumption.” Id. at 12, 630 S.E.2d at 470.

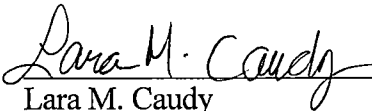
5. **All** reports made and information collected by the Department of Social Services and the Central Registry of Child Abuse and Neglect are **confidential**. S.C. Code Ann. § 63-7-1990(A). Disseminating these records or information contained in these records is a misdemeanor punishable by a fine of not more than five hundred dollars or by imprisonment of not more than one year. Id.

6. Because Court’s Exhibit No. 2 contains records made confidential by statute and because the contents of the records contained Court’s Exhibit No. 2 are discussed extensively

throughout Appellant's trial, Appellant moves this Court to seal the Record on Appeal. Additionally, because Appellant's initial brief references the information contained in the records marked as Court's Exhibit No. 2, and undersigned counsel anticipates Respondent's initial brief will likewise reference such information, Appellant also moves this Court to seal all briefs filed or to be filed in this case.

WHEREFORE, Appellant moves this Court for an order sealing all briefs filed or to be filed in this matter as well as the Record on Appeal. Alternatively, Appellant requests this Court continue to hold Court's Exhibit No. 2 under seal and seal the portions of the briefs filed or to be filed that contain confidential information from the DSS records marked as Court's Exhibit No. 2.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

Attorney for Appellant

December 2, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Michael G. Nettles, Circuit Court Judge

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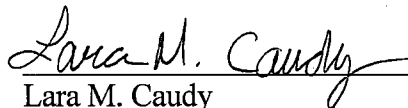
BARRY EUGENE LAFAVOR,

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CERTIFICATE OF SERVICE

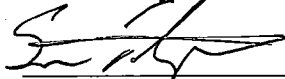
The undersigned attorney hereby certifies that a true copy of the Motion to Seal All Briefs Filed and the Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of December, 2015.



Lara M. Caudy
Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 2nd day of December, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.