The Supreme Court of South Carolina

The State, Petitioner,

v.

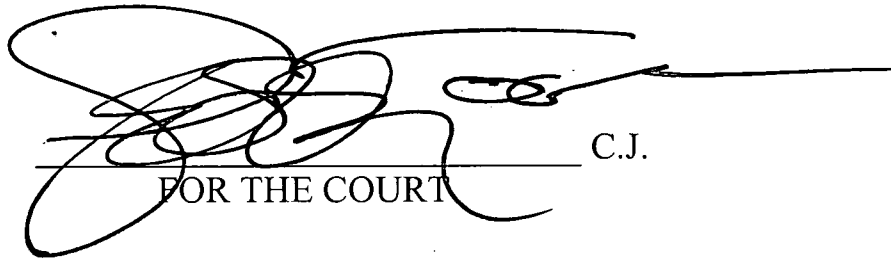
Danny Cortez Brown, Respondent.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2006-GS-26-01349

ORDER

Petitioner seeks a **fourth** extension to serve and file the Brief of Petitioner and additional copies of Appendix, and asserts that extraordinary circumstances justify this extension. The opposing party does not oppose and consents to the extension. The request for an extension is granted until May 18, 2012. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.



C.J.

FOR THE COURT

Columbia, South Carolina

April 20, 2012

cc: Assistant Attorney General Mark R. Farthing
John Gregory Hembree, Esquire
Appellate Defender Elizabeth A. Franklin-Best

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Horry County
Honorable Steven H. Johns, Circuit Court Judge

THE STATE,

Petitioner,

vs.

DANNY CORTEZ BROWN,

Respondent.

MOTION FOR FOURTH EXTENSION OF TIME WITHIN WHICH TO SERVE AND FILE BRIEF OF PETITIONER

Petitioner, through its undersigned counsel, would respectfully show unto the Court as follows:

I.

The Brief of Petitioner is due to be served and filed on April 17, 2012.

II.

Pursuant to RE: Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings: Order of the South Carolina Supreme Court dated March 18, 2009, the Petitioner moves for a third extension in the above-referenced criminal appeal. Due to work required in other cases pending before this Court and the South Carolina Court of Appeals, I am unable to complete this Brief on time. In the past few weeks, the undersigned has participated in oral argument at the Court of Appeals in State v. Adrian Eaglin, State v. Otis

Lamar Bland, Jr., and State v. Kevin Tijuan Hardy, has submitted Initial Briefs to the Court of Appeals in State v. Baylock, State v. Rice, State v. Gallishaw, State v. Maxwell, State v. Jackson, State v. McFarland, State v. Parker, State v. Poole, State v. Aiken, and State v. Dawson, has filed a Petition for Rehearing in the Court of Appeals in State v. Jamison and State v. Jenkins, has filed a Petition for Rehearing in this Court in State v. Odems, has filed a Return to Petition for Rehearing in the Court of Appeals in State v. Salley, has filed a Petition for Writ of Certiorari in this Court in State v. Hill and State v. Jamison, and has filed a Return to Petition for Writ Certiorari in the Supreme Court in State v. Butler, State v. Johnson, and State v. Morris.

III.

This extension request is not intended for purposes of delay, but rather to ensure that the Brief is properly researched and prepared. The Brief in the above case has required significant research because the case involves a significant exclusionary rule issue on appeal. The undersigned is currently working on the Brief in this case and hopes to have it completed in a timely manner. I would therefore request an extension of time within which to serve and file the Brief.

WHEREFORE, Petitioner prays that the Court extend the deadline for the service and filing of the Brief of Petitioner in this case for thirty (30) days from the date such relief is granted; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

By: _____
Mark R. Farthing

By: _____
Salley W. Elliott

By: _____
John W. McIntosh

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

April 17, 2012

I Consent or Do Not Oppose:

By: _____
Elizabeth A. Franklin-Best

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Horry County
Honorable Steven H. Johns, Circuit Court Judge

THE STATE,

Petitioner,

vs.

DANNY CORTEZ BROWN,

Respondent.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Motion for Fourth Extension of Time Within Which to Serve and File Brief of Petitioner on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Elizabeth A. Franklin-Best, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 17th day of April, 2012.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

April 17, 2012

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: State v. Danny Cortez Brown

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Motion for Fourth Extension of Time Within Which to Serve and File Brief of Petitioner, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Mark R. Farthing
Assistant Attorney General

MRF/erd
Enclosures

cc: Elizabeth A. Franklin-Best, Esquire
Victim Services

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

The Supreme Court of South Carolina

The State, Petitioner,

v.

Danny Cortez Brown, Respondent.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2006-GS-26-01349

ORDER

For good cause shown, the request for an extension to serve and file the Brief of Petitioner is granted and extended until April 18, 2012. Pursuant to this Court's order dated March 18, 2009, any further extension request must show the existence of extraordinary circumstances, state what actions are being taken to insure that no further extension will be required, and be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Brenda J. Healy
Chief Deputy Clerk

Columbia, South Carolina

March 22, 2012

cc: Assistant Attorney General Mark R. Farthing
John Gregory Hembree, Esquire
Appellate Defender Elizabeth A. Franklin-Best

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Horry County
Honorable Steven H. Johns, Circuit Court Judge

THE STATE,

Petitioner,

(3)

vs.

DANNY CORTEZ BROWN,

Respondent.

MOTION FOR THIRD EXTENSION OF TIME WITHIN WHICH TO SERVE AND FILE BRIEF OF PETITIONER

Petitioner, through its undersigned counsel, would respectfully show unto the Court as follows:

I.

The Brief of Petitioner is due to be served and filed on March 19, 2012.

II.

Pursuant to RE: Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings: Order of the South Carolina Supreme Court dated March 18, 2009, the Petitioner moves for a third extension in the above-referenced criminal appeal. Due to work required in other cases pending before this Court and the South Carolina Court of Appeals, I am unable to complete this Brief on time. In the past few weeks, the undersigned has participated in oral argument at the Court of Appeals in State v. Adrian Eaglin and State v. Otis

Lamar Bland, Jr., has submitted Initial Briefs to the Court of Appeals State v. Baylock, State v. Rice, State v. Gallishaw, State v. Maxwell, State v. Jackson, State v. McFarland, State v. Parker, State v. Poole, and State v. Aiken, has filed a Petition for Rehearing in the Court of Appeals in State v. Jamison, has filed a Petition for Rehearing in this Court in State v. Odems, and has filed a Petition for Certiorari in this Court in State v. Hill, and has filed a Return to Petition for Certiorari in this Court in State v. Butler and State v. Johnson.

III.

This extension request is not intended for purposes of delay, but rather to ensure that the Brief is properly researched and prepared. The Brief in the above case has required significant research because the case involves a significant exclusionary rule issue on appeal. The undersigned is currently working on the Brief in this case and hopes to have it completed in a timely manner. I would therefore request an extension of time within which to serve and file the Brief.

WHEREFORE, Petitioner prays that the Court extend the deadline for the service and filing of the Brief of Petitioner in this case for thirty (30) days from the date such relief is granted; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

By: _____
Mark R. Farthing

By: _____
Salley W. Elliott

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

March 19, 2012

I Consent or Do Not Oppose:

By: _____
Elizabeth A. Franklin-Best

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Horry County
Honorable Steven H. Johns, Circuit Court Judge

THE STATE,

Petitioner,

vs.

DANNY CORTEZ BROWN,

Respondent.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Motion for Third Extension of Time Within Which to Serve and File Brief of Petitioner on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Elizabeth A. Franklin-Best, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 19th day of March, 2012.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

March 19, 2012

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: State v. Danny Cortez Brown

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Motion for Third Extension of Time Within Which to Serve and File Brief of Petitioner, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Mark R. Farthing
Assistant Attorney General

MRF/erd
Enclosures

cc: Elizabeth A. Franklin-Best, Esquire
Victim Services

The Supreme Court of South Carolina

The State, Petitioner,

v.

Danny Cortez Brown, Respondent.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2006-GS-26-01349

ORDER

For good cause shown, the request for an extension to serve and file the Brief of Petitioner is granted and extended until March 19, 2012. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause and must be signed by the appropriate attorneys.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Brenda F. Shealy
Chief Deputy Clerk

Columbia, South Carolina

February 21, 2012

cc: Assistant Attorney General Mark R. Farthing
John Gregory Hembree, Esquire
Appellate Defender Elizabeth A. Franklin-Best

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

On Writ of Certiorari to the Court of Appeals
Appeal from Horry County
Honorable Steven H. Johns, Circuit Court Judge

THE STATE,

Petitioner,

vs.

DANNY CORTEZ BROWN,

Respondent.

MOTION FOR SECOND EXTENSION OF TIME WITHIN WHICH TO SERVE AND FILE BRIEF OF PETITIONER

Petitioner, through its undersigned counsel, would respectfully show unto the Court as follows:

I.

The Brief of Petitioner is due to be served and filed on February 16, 2012.

II.

Pursuant to RE: Extension Requests in Criminal Direct Appeals and Post-Conviction Relief Certiorari Proceedings: Order of the South Carolina Supreme Court dated March 18, 2009, the Petitioner moves for a second extension in the above-referenced criminal appeal. Due to work required in other cases pending before this Court and the South Carolina Court of Appeals, I am unable to complete this Brief on time. In the past few weeks, the undersigned has participated in oral argument at the Court of Appeals in State v. Sonny Stonewall Hawkins, State

v. Gerald Fripp, State v. John Porter Johnson, State v. Andra Byron Jamison, State v. James Robert Nash, State v. Daniel J. Jenkins, and State v. Adrian Eaglin, has participated in oral argument at this Court in State v. Charles Q. Jackson and State v. Kevin Cornelius Odems, has submitted Initial Briefs to the Court of Appeals in State v. Simuel, State v. Rolen, State v. Simmons, State v. Green, State v. Jolly, State v. White, State v. Meggett, State v. Wesley, State v. Foster, State v. Price, State v. Berry, and State v. Baylock, has filed a Petition for Rehearing in the Court of Appeals in State v. Morris and State v. Jamison, has filed a Petition for Rehearing in this Court in State v. Odems, and has filed a Return to Petition for Certiorari in this Court in State v. Williams, State v. Bennett, State v. Avery, State v. Sams, and State v. Romero.

III.

This extension request is not intended for purposes of delay, but rather to ensure that the Brief is properly researched and prepared. The Brief in the above case has required significant research because the case involves a significant exclusionary rule issue on appeal. The undersigned is currently working on the Brief in this case and hopes to have it completed in a timely manner. I would therefore request an extension of time within which to serve and file the Brief.

WHEREFORE, Petitioner prays that the Court extend the deadline for the service and filing of the Brief of Petitioner in this case for thirty (30) days from the date such relief is granted; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

By: _____
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

February 16, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Horry County
Honorable Steven H. Johns, Circuit Court Judge

THE STATE,

Petitioner,

vs.

DANNY CORTEZ BROWN,

Respondent.

PROOF OF SERVICE

I, Angela S. Bennett, certify that I have served the within Motion for Second Extension of Time Within Which to Serve and File Brief of Petitioner on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Elizabeth A. Franklin-Best, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 16th day of February, 2012.

ANGELA S. BENNETT
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

February 16, 2012

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: State v. Danny Cortez Brown

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Motion for Second Extension of Time Within Which to Serve and File Brief of Petitioner, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Mark R. Farthing
Assistant Attorney General

MRF/erd
Enclosures

cc: Elizabeth A. Franklin-Best, Esquire
Victim Services

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

The Supreme Court of South Carolina

The State, Petitioner,

v.

Danny Cortez Brown, Respondent.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2006-GS-26-01349

ORDER

The request for an extension to serve and file the Brief of Petitioner and additional copies of the Appendix is granted and extended until February 16, 2012. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Brenda L. Shealy
Chief Deputy Clerk

Columbia, South Carolina

January 18, 2012

cc: Assistant Attorney General Mark R. Farthing
John Gregory Hembree, Esquire
Appellate Defender Elizabeth A. Franklin-Best

ALAN WILSON
ATTORNEY GENERAL

January 17, 2012

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: State v. Danny Cortez Brown

Dear Mr. Shearouse:

The Brief of Petitioner in the above-referenced criminal appeal is due to be served and filed on January 17, 2012. However, due to a heavy workload, I am requesting a thirty-day extension to file this brief. This is the first extension request at this stage in the process, and it is not intended for the purpose of delay.

I appreciate your consideration of this request and ask that you hold the filing time in abeyance during the time in which this request is pending.

By copy of this letter, I am informing counsel for Respondent of this request.

Sincerely,

Mark R. Farthing
Assistant Attorney General

MRF/erd

cc: Elizabeth A. Franklin-Best, Esq.
Victim Services

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 15, 2011

Atty Gen Alan Wilson
Chief Deputy Atty Gen John W. McIntosh
Assist Atty Gen Salley W. Elliott
Senior Assist Atty Gen Norman Mark Rapoport
Assist Atty Gen Mark R. Farthing
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Brown, Danny Cortez

Dear Counsel:

Enclosed is the Order granting your Petition for Writ of Certiorari in the above entitled matter.

It will be necessary for you to furnish this office with an additional thirteen (13) copies of the appendix within thirty (30) days from the date of this letter.

Brief of Petitioner should be served and filed on or before January 17, 2011. The brief is not properly filed until we have proof of service.

Brief of Respondent should be served and filed within thirty (30) days after petitioner's brief is filed. We must have proof of service. Any reply brief should be served and filed within ten (10) days after filing of respondent's brief.

Very truly yours,

CLERK

DES/lda

Enclosure

cc: John Gregory Hembree, Esquire
Appellate Defender Elizabeth A. Franklin-Best
The Honorable Melanie Huggins
The Honorable Tanya Gee

The Supreme Court of South Carolina

Danny Cortez Brown, Respondent,

v.

The State, Petitioner.

ORDER

We grant the petition for a writ of certiorari to review the Court of Appeals' decision in State v. Brown, 389 S.C. 473, 698 S.E.2d 811 (Ct. App. 2010). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

C. J.

J.

J.

J.

J.

Columbia, South Carolina

December 15, 2011

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

On Writ of Certiorari
To the Court of Appeals

Appeal From Horry County
Steven H. Johns, Circuit Court Judge

THE STATE,

Petitioner,

vs.

DANNY CORTEZ BROWN,

Respondent.

PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

NORMAN MARK RAPOPORT
Senior Assistant Attorney General

MARK R. FARTHING
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J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit

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(843) 915-5460

ATTORNEYS FOR PETITIONER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Other Authorities:

STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals err in reversing the trial judge's denial of Brown suppression motion where the challenged evidence inevitably would have been discovered regardless of the propriety of the original search?

STATEMENT OF THE CASE

Procedural History

On October 6, 2005, Respondent Danny Cortez Brown was arrested following a traffic stop during which he was observed with an open container of alcohol. In March of 2006, the Horry County grand jury indicted Brown for trafficking in cocaine in a quantity between 100 and 200 grams. On September 12, 2006, Webb proceeded to trial in the Horry County court of general sessions with the Honorable Steven H. John, circuit court judge, presiding. At the conclusion of trial, the jury convicted Brown as indicted. The trial judge sentenced Brown to a term of imprisonment of twenty-five years. Brown then timely filed and perfected an appeal.

In a published decision, the South Carolina Court of Appeals reversed Brown's conviction.[1] State v. Brown, 389 S.C. 473, 698 S.E.2d 811 (Ct. App. 2010). Subsequently, the State unsuccessfully petitioned the Court of Appeals for a rehearing before timely filing this petition for a writ of certiorari in the South Carolina Supreme Court.

Factual History

On the evening of October 6, 2005, Officer Daryl Williams of the Horry County Police Department was on patrol in Myrtle Beach. (R. pp. 1-2). Around 7:00 p.m, Officer Williams glanced over at a vehicle to his side and noticed the passenger, Respondent Danny Cortez Brown, was holding a beer can. (R. pp. 2-3). Brown then made eye contact with the officer and quickly attempted to tuck the beer can between his legs. (R. p. 2). Officer Williams proceeded to initiate a traffic stop based on the open

[1]This opinion was filed on June 14, 2010, as Opinion No. 4697.

container violation. (R. p. 2).

After the officer activated his blue lights, the driver of the other car, Rodney Smith, stopped his vehicle in the roadway. (R. p. 4; p. 12; p. 23; p. 87). When Officer Williams approached, Smith began behaving very nervously while Brown appeared to be "artificially laid back." (R. p. 4; p. 25; p. 32). Officer Williams asked Brown about the beer can, and Brown initially denied having one. (R. p. 4). However, Brown then pulled a beer can up from between his legs and showed it to the officer. (R. p. 4; pp. 17-18). Officer Williams then instructed Brown to step out of the vehicle and placed him under arrest for the open container violation. (R. pp. 4-5). During the stop, he observed a black duffle bag between Brown's legs. (R. pp. 5-6). Officer Williams then removed the bag and placed it on the sidewalk for safety reasons so the passenger would not be able to access it. (R. pp. 6-7; p. 24). Brown acknowledged ownership of the duffle bag. (R. p. 6; p. 26). After securing the duffle bag, Officer Williams then placed Brown into the back of his police vehicle. (R. p. 8).

After detaining Brown, Officer Williams went back and casually spoke with Smith. (R. p. 9). While speaking with Smith, he unzipped the duffle bag and looked inside. (R. p. 9; pp. 24-25). He located a crumpled bag of Fritos chips, opened it, and discovered a plastic bag containing 122.65 grams of cocaine hidden within. (R. p. 9; pp. 116-117). He then closed the duffle bag, walked over to Smith, asked for his driver's license, and discovered it was suspended. (R. p. 11). After other officers arrived on the scene, Officer Williams arrested Smith for driving under suspension, and Smith was placed into another police vehicle. (R. pp. 11-12; p. 27).

Meanwhile, Detective Tom Delpercio, a narcotics investigator, responded to the

scene after being alerted cocaine had been discovered during the traffic stop. (R. pp. 34-35). He took custody of the duffle bag, advised Brown of his rights, and attempted to speak with him. (R. p. 37). Brown declined to do so. (R. p. 37). The officers then searched Smith's vehicle and discovered a smaller bag of drugs under the driver's seat containing a medley of narcotics, including crack cocaine, Xanax pills, marijuana, and powder cocaine.[2] (R. pp. 37-38; p. 49). Subsequently, Smith waived his rights and claimed ownership of the drugs found under his driver's seat. (R. pp. 40-41).

Sometime after his arrest, Brown was released from custody. (R. p. 45). Following his release, Brown attempted to retrieve his possessions from the police department. (R. p. 26; pp. 44-45). Upon request, an evidence technician returned the black duffle bag, various items of clothing, and a cell phone to Brown on October 12, 2005, after Brown provided a driver's license and signed for the property's release.[3] (R. p. 112). The narcotics located in the duffle bag were not returned to Brown. (R. pp. 44-45). Subsequently, Brown was indicted for trafficking in cocaine, and he proceeded to trial.

During trial, Officer Williams and Detective Delpercio recounted the circumstances of the traffic stop and the ensuing discovery of the drugs. (R. p. 1; p. 34). Following their testimony, Brown moved to suppress the evidence seized from the black duffle bag. (R. p. 63). Brown asserted Officer Williams should have ended his search

---

[2]Regarding the search, Detective Delpercio testified: "Under a lawful search incident to arrest of the vehicle, in the passenger area, and pursuant also to guidelines of doing inventory of the vehicle before towing, we searched that vehicle." (R. p. 37).

[3]Lori Rabon, an technician custodian with the Horry County Police Department, testified the duties of an evidence technician generally included safely returning non-relevant personal items and property back to the owner. (R. p. 113).

after performing a pat-down search and needed consent to search any further. (R. p. 64). The trial judge took the matter under advisement. (R. pp. 68-70).

Smith then testified about the circumstances of the incident. (R. pp. 72-73). Smith testified he stopped at a gas station and Brown approached his vehicle. (R. pp. 72-73; p. 74). Smith indicated Brown asked him if wanted to purchase some narcotics and he told Brown he did. (R. p. 74). He then attempted to give Brown a ride home so he could purchase some cocaine from him, and Brown retrieved a black duffle bag from another vehicle. (R. pp. 72-73). Smith then stated they were stopped by a police officer a short distance from the gas station because Brown was drinking a beer. (R. p. 73). Smith testified he stopped his vehicle in the middle of the highway and the officer initially asked for his driver's license, which was suspended. (R. p. 73; p. 87; pp. 90-91; p. 93). Smith indicated the officer then arrested Brown and placed him in the police vehicle. (R. pp. 90-91). Smith then stated the officer searched the duffle bag and arrested him for driving under suspension. (R. p. 93; p. 95). Smith further acknowledged he was a drug dealer and user, his drugs were found underneath his seat, and he had $250 in his pocket to purchase an "eight ball" of cocaine from Brown. (R. pp. 77-78; p. 84; p. 100).

After the State rested its case, Brown renewed his argument for the suppression of the narcotics, arguing the search was not a valid search incident to an arrest.[4] (R. pp. 129-134). In rebuttal, the solicitor asserted the search was valid under the controlling United States Supreme Court precedent of New York v. Belton, 453 U.S. 454 (1981), and Thornton v. United States, 541 U.S. 615 (2004). (R. pp. 134-143). Following the

[4]Earlier, during the testimony of the drug analyst, the cocaine seized from Brown's duffle bag was admitted into evidence over objection. (R. pp. 118-120).

solicitor's response, the trial judge asked Brown if the drugs would have inevitably been discovered while the duffle bag, which indisputably belonged to Brown, was inventoried during the arrest and booking process. (R. pp. 143-144). Brown responded: "It may be inevitable that they be found, but it doesn't make it proper." (R. p. 144). The trial judge denied the suppression motion, finding the search to be proper under the test announced in Belton. (R. pp. 151-153). The trial judge additionally noted: "[The duffle bag] could have been inventoried at the same time [Brown] was transported to the detention center and booked and arrested." (R. p. 150). However, he noted the search in this case was not an inventory search. (R. p. 150). Subsequently, at the conclusion of trial, Brown was convicted as charged and sentenced to twenty-five years incarceration.

Following his conviction, Brown timely filed and perfected an appeal. During the pendency of the appeal, the United States Supreme Court issued an opinion in Arizona v. Gant, ___ U.S. ___, 129 S. Ct. 1710 (2009), which significantly limited the Court's earlier holdings in Belton and Thornton. Subsequently, applying Gant, the Court of Appeals reversed Brown's conviction, finding the search was not a valid search incident to an arrest. Brown, 389 S.C. at 480-481, 698 S.E.2d at 815. The Court further found the search was not valid under the automobile exception to the warrant requirement. Id. at 483, 698 S.E.2d at 816. Finally, the Court rejected the contention the drugs would have inevitably been found during a routine inventory search. Id. at 483-484, 698 S.E.2d at 816. Following the Court's decision, the State petitioned for rehearing, and the petition was denied. This petition for a writ of certiorari follows.

ARGUMENT

Did the Court of Appeals err in reversing the trial judge's denial of Brown suppression motion where the challenged evidence inevitably would have been discovered regardless of the propriety of the original search?

The Court of Appeals erred in finding Brown's cocaine would not have been inevitably discovered. Although recognizing common sense dictated the duffle bag inevitably would have been taken into custody after Brown and Smith were arrested, the Court of Appeals concluded there was insufficient evidence to establish the cocaine inevitably would have been discovered. To the contrary, the evidence presented showed the officers intended to perform a routine inventory search contemporaneous with the towing of Smith's vehicle. Additionally, even if an inventory search of the vehicle was not performed, Brown's duffle bag, which Brown claimed ownership of at the time of his arrest, would have inevitably been taken into custody and inventoried as part of the standard booking process. Therefore, the Court of Appeals' holding was erroneous and should be reversed. The State's petition for a writ of certiorari should be granted, and Brown's conviction should ultimately be affirmed.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures, including those involving only a brief detention. State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005). However, "[t]he purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.' " United States v. Mendenhall, 446 U.S. 544, 553-554 (1980)

(quoting United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976)).

Any evidence seized as the result of an unreasonable search and seizure must be excluded from trial. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). The well-settled rule is warrantless searches are unreasonable per se unless they fall under an exception to the Fourth Amendment's warrant requirement. State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978).

The inevitable discovery doctrine has been adopted as such an exception to the exclusionary rule. Nix v. Williams, 467 U.S. 431, 444 (1984). If the prosecution can establish by a preponderance of the evidence that information or evidence would have inevitably been discovered by lawful means, then the discovered evidence, even if obtained by unlawful means, is admissible. Id. "Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial." Id. at 446. While the exclusionary rule is designed to ensure the prosecution will not be placed in a better position than it would have been without an illegal search or some police misconduct, the inevitable discovery doctrine ensures the prosecution is not placed in a **worse** position simply because of some earlier police error or misconduct. Id. at 443.

In the case sub judice, the evidence presented at trial established Brown's cocaine would have been inevitably discovered either in an inventory search during the booking process or in an inventory search of Smith's vehicle following his arrest. Regarding the vehicle inventory search, Detective Delpercio testified he searched Smith's car pursuant to guidelines regarding inventory searches of vehicles before they are towed. The evidence further established Smith's vehicle was stopped in the middle of a roadway at

the time of incident. Therefore, the officers clearly would not have abandoned the vehicle in the roadway after arresting both the passenger and driver. See State v. Lemacks, 275 S.C. 181, 184, 268 S.E.2d 285, 286 (1980) (finding an inventory search to be justified after a vehicle was discovered abandoned in the roadway because the towing of a vehicle in the roadway was reasonably foreseeable). Logically, the vehicle and the personal property connected to it would have been taken into law enforcement custody and secured. See United States v. Johnson, 383 F.3d 538, 545, n.8 (7th Cir. 2004) (finding the contents of the trunk would inevitably been discovered in an inventory search because the officers would have taken possession of the vehicle after the driver was arrested); see also United States v. Johnson, 112 F. App'x 138, 139-140 (3rd Cir. 2004) (holding, where an officer stopped a vehicle and determined the driver did not have a valid license and had outstanding warrants, a search of a duffle bag in the vehicle should not be suppressed because the drugs found inside would have inevitably been discovered during an inventory search). After the vehicle and property were secured, an inventory search would have been necessary to protect the suspects' belongings and also to protect the police department from claims of lost or stolen property. Therefore, Brown's duffle bag would have inevitably been searched during a routine inventory search after Smith's car was taken into custody, and Brown's cocaine would have inevitably been found regardless of the improper search performed at the scene.

Additionally, even if Brown's duffle bag would not have been discovered in a routine inventory search of Smith's vehicle, it would have been discovered during a search of Brown and his property during the routine booking process after his arrest. Immediately after Brown was arrested, Officer Williams removed Brown's duffle bag,

which had been tucked between Brown's legs, from the vehicle and placed it on the sidewalk. See United States v. Andrade, 784 F.2d 1431, 1433 (9th Cir. 1986) (finding a garment bag recovered from the defendant's feet would have inevitably been searched during a routine booking and inventory search and thus should not be suppressed). Brown then claimed ownership of the duffle bag. Undeniably, Brown was lawfully arrested for the open container violation and was the owner of the duffle bag.[5] Therefore, after his arrest, Officer Williams would have transported Brown and his property to the detention center for booking as part of the arrest process. Even if Brown's cocaine was not discovered during the on-the-scene search of his duffle bag, the drugs would have been discovered when his property was inventoried and cataloged for safe-keeping at the police department. See Whren v. United States, 517 U.S. 806, 812, n.1 (1996) ("An inventory search is the search of property lawfully seized and detained, in order to ensure that it is harmless, to secure valuable items (such as might be kept in a towed car), and to protect against false claims of loss or damage."). Therefore, as the narcotics would have been inevitably discovered during a search of Brown's property during the routine booking process, the evidence was properly admitted at trial.

Furthermore and critically, although the Court of Appeals found the evidence insufficient to establish an inventory search would have occurred, the testimony clearly establishes an inventory search **was** performed after Brown's arrest. An evidence technician testified she released Brown's non-illegal property to him after his was released from custody, including his duffle bag, different articles of clothing, and a cell

[5]Brown continued to claim ownership of the black duffle bag during his testimony at trial. (R. p. 158; p. 160).

phone. She released the property to Brown only after he verified his identity with a driver's license and signed for the items. Therefore, the testimony in this case clearly illustrates his property would have been inventoried as part of the routine booking procedures, and the drugs would have inevitably been discovered.

During trial, Brown acknowledged to the trial judge the drugs may have inevitably been discovered, but he contended that did not make the search proper and was a moot point because an inventory search was not done in this case. (R. pp. 144-145). However, Brown misunderstood the issue because the inevitable discovery doctrine prevents the exclusion of evidence that would inevitably have been discovered regardless of the existence of an earlier improper search. The fact the cocaine was not actually first discovered in an inventory search was irrelevant. In this case, the narcotics would have been discovered during a routine inventory search of the automobile or of Brown's belongings during the booking process if no improper search had occurred. See, e.g., United States v. Zapata, 18 F.3d 971, 978 (1st Cir. 1994) ("Evidence which comes to light by unlawful means nonetheless can be used at trial if it ineluctably would have been revealed in some other (lawful) way so long as (i) the lawful means of its discovery are independent and would necessarily have been employed, (ii) discovery by that means is in fact inevitable, and (iii) application of the doctrine in a particular case will not sully the prophylaxis of the Fourth Amendment."). Brown's acknowledgment the drugs would most likely have been inevitably discovered further shows the evidence should not have been suppressed.

As the Court of Appeals noted, common sense dictated the duffle bag and Smith's vehicle would have been taken into custody following the arrests. The evidence and

testimony showed an inventory search of the duffle bag would have been and was performed. See Nix, 467 U.S. at 444 ("If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received. **Anything less would reject logic, experience, and common sense.**" (emphasis added)). Therefore, the property should not have been suppressed based on the inevitable discovery doctrine. The Court of Appeals erred in finding Brown's narcotics would not have inevitably been discovered during an inventory search. The Court of Appeals' decision is inconsistent with the inevitable discovery doctrine and the goals it serves, and the ruling would result in unnecessarily high societal costs by excluding evidence which would have been discovered even without the improper discoveries made during the initial search. See Id. at 443 ("[T]he prosecution is not to be put in a better position than it would have been is no illegality had transpired. By contrast, the derivative evidence analysis ensures the prosecution is not put in a worse position simply because of some earlier police error or misconduct."). Therefore, the Court of Appeals' decision should be reversed.[6] The State's petition for a writ of certiorari should be granted, and Brown's conviction should ultimately be affirmed.

---

[6]Additionally, under the facts and circumstances of this case, even if this Court were to find the evidence insufficient to show Brown's cocaine would have inevitably been discovered, the case should be remanded for further proceedings. The trial court found the original search to be proper under the applicable United States Supreme Court precedent at the time of trial. Therefore, the trial judge did not need to reach the issue of whether the evidence would have inevitably been discovered. Subsequent to the trial judge's decision, the United States Supreme Court altered the applicable law in regards to searches incident to lawful arrests. Based on the more recent decision, the Court of Appeals reversed the trial judge's ruling. If this Court finds there is insufficient evidence to determine if the cocaine would have inevitably been discovered, a remand would allow the trial judge to more fully address and examine the issue while best serving the goals of the exclusionary rule without resulting in the unnecessarily high societal costs stemming from the suppression of the evidence. See United States v. Griffiths, 47 F.3d 74, 78 (2nd Cir. 1995) (remanding a case for further proceedings regarding whether the cocaine would have been discovered pursuant to an established inventory procedure because the trial courts previously failed to reach the issue).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted the petition for writ of certiorari should be granted.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

NORMAN MARK RAPOPORT
Senior Assistant Attorney General

MARK R. FARTHING
Assistant Attorney General

J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit

BY: 
MARK R. FARTHING

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 24, 2010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari
To the Court of Appeals

Appeal From Horry County
Steven H. Johns, Circuit Court Judge

THE STATE,

Petitioner,

vs.

DANNY CORTEZ BROWN,

Respondent.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Petition for Writ of Certiorari and Appendix on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Elizabeth A. Franklin-Best, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 24th day of November, 2010.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Steven H. John, Circuit Court Judge

Opinion No. 4697 (S.C. Ct. App. filed 6/14/2010)
06-GS-26-1349.

RECEIVED

JAN 31 2011

S.C. Supreme Court

THE STATE,

PETITIONER,

V.

DANNY CORTEZ BROWN,

RESPONDENT.

RETURN TO PETITION FOR WRIT OF CERTIORARI
IN THE COURT OF APPEALS

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR RESPONDENT

INDEX

QUESTION PRESENTED

Whether this Court should deny the State's petition for writ of certiorari because while the State argues that the drugs would inevitably have been found, this argument lacks evidentiary support as the Court of Appeals correctly noted.

STATEMENT OF THE CASE

Danny Brown was indicted by the Horry County Grand Jury for Trafficking Cocaine between 100 and 200 grams. (2006-GS-26-1349). He was tried before the Honorable Steven H. John and a jury on September 12th and 13th 2006. He was represented by Russell Long, Esquire. He was found guilty, and sentenced to twenty-five (25) years incarceration.

Respondent appealed his sentence and conviction and the South Carolina Court of Appeals reversed. State v. Brown, Op. No. 4697 (filed June 14, 2010). The state then filed its petition for rehearing, and respondent filed his return to the petition for rehearing on July 12, 2010. The order denying the state's petition for rehearing was filed September 24, 2010.

The state then filed its petition for writ of certiorari, and this return timely follows.

ARGUMENT

This Court should deny the State's petition for writ of certiorari because while the state argues that the drugs would inevitably have been found, this argument lacks evidentiary support as the Court of Appeals correctly noted.

The state argues that the drugs in this case would have been discovered by way of the inevitable discovery doctrine. Pet. 7. Additionally the state is now asking— after the publication of an adverse opinion—for a remand to the trial court to more fully develop the record in support of that claim. Pet.12. Respectfully, the state's position lacks evidentiary support, and further, this Court should decline to remand this case for further proceedings.

Regarding the state's inevitability argument, the Court of Appeals directly addressed this argument in its opinion:

> "The State provided very scant testimony, at best, that the duffel bag or car would have been taken into police custody after Brown and the driver were arrested. Although common sense dictates the police would have done exactly this, we are confined by the law that the prosecution bears the burden to establish by a preponderance of the evidence that the evidence would inevitably have been discovered. Nix[1], 467 U.S. at 443-44. Additionally, police must follow standard procedures to conduct an inventory search and no such testimony was presented. Thus, we conclude the inevitable discovery doctrine does not apply and the trial court erred by failing to exclude the evidence."

In fact, as a review of the facts of this case reveals, it is highly unlikely that law enforcement would have seized the car in this case at all, given that the driver of the vehicle was not suspected of any crime prior to law enforcement's discovery of the drugs which were attributed to respondent. In any event, the state failed to provide an evidentiary basis for this claim when they were in a position to do so.

---

[1] Nix v. Williams, 467 U.S. 431 (1984).

Danny Brown was drinking a beer as he was riding in a friend's car. Williams, an officer with the Spartanburg Public Safety Department for 2 years, caught sight of this infraction as he was passing by on the highway. ROA 1, ll. 4-8; p. 1, l. 21 to p. 2, l. 8. Williams pulled the car over to investigate.

After first approaching the driver's side window and speaking with the occupants, Williams then approached the passenger side window and spoke to respondent, whom he described as "calm." He asked respondent to step out of the vehicle and then "placed him under arrest kind of quickly." ROA 7, ll. 1-2. Williams claimed he wanted to "find out if there were any more beer cans." ROA 5, ll. 4-5. Respondent was removed from the car and handcuffed, and Williams looked down at the floorboard to see a zipped duffel bag. Williams asked him if the bag belonged to him, and respondent said it did. ROA 6, ll. 12-14. As respondent was being cuffed, the duffel bag was left alone with the driver of the car, and Williams did not keep his eye on it the whole time. ROA 14, ll. 11-17.[2] After handcuffing him, Williams then placed the bag on the sidewalk, and took respondent and secured him in the patrol car. Williams walked back to the passenger side of the car, where the bag was located on the sidewalk, and "want[ing] to get a glance into the bag", unzipped it and looked inside. ROA 9, l. 13. Among the deodorant, underwear, and other personal effects, was a "crumpled up" bag of Frito chips. ROA 9, ll. 17-19. Still curious, he opened the bag of chips and found what he believed to be drugs. At that point, Williams ran the drivers license of

---

[2] But on cross-examination Williams testified differently: "Actually I asked him before, as we stood there, before we left, right there at that passenger door. I had him—hands on him. He was cuffed, and I had my other—right hand free, and I pointed down and said, is that your bag. He said, yes, so then I reached into the bag . . ." ROA 24, ll. 6-9. Smith, also a State's witness, placed the duffel bag in the car for an even longer period of time. Smith said that Williams grabbed the bag after he had taken Brown back to his patrol car. ROA 89- 92.

Smith—the driver-- who had been sitting alone in the car this entire time, and found that it was suspended. Smith was arrested and Williams called for back-up. ROA 11, ll. 18-23.

It is highly unlikely that law enforcement would have impounded this automobile based on the mere drinking infraction of the passenger. Additionally, the driver of the car was not suspected of any illegal activity until the illegal search was conducted.

In any event, the state failed to meet their burden to show by a preponderance of the evidence that such an inventory search would have been conducted under these conditions. Colorado v. Bertine, 479 U.S. 367 (1987); Florida v. Wells, 495 U.S. 1 (1990). When the judge made the specific finding at trial that this was not an inventory search, the state did not object to that finding. ROA 150, l. 8. Indeed, the state argued at trial that this case was distinguishable from the line of cases relating to inventory searches:

> The Chadwick case, as well as these other cases, such as Bertine and Wells Lafayette—excuse me, Bertine, Wells, Lafayette to Florida, these are all inventory search cases, Your Honor. Those are all based on a defendant is in custody. There is a standard procedure established because the car is impounded in a lot, or the defendant is in jail, and they are going through his property pursuant to the inventory search, and so the policies surrounding the police department open all the containers, or don't open any, are relevant in that, and that is the nature of those cases. Bertine sets it up, Wells continues it. But those are all not exi—those aren't searches incident to arrest. Too much time has transpired. It is not contemporaneous with the arrest. It is inventory. The car is in an impound lot, and at some point in time they go through those.
>
> **So the facts of this case are distinguished from the Bertine, Wells and Lafayette line of cases.**

ROA. 135, l. 18- p. 136, l. 10 (emphasis added).

Respectfully, the state now urges an entirely different basis for sustaining this search now than they did at trial, while this case was being briefed, or after Arizona v. Gant[3] was decided. The state only urges this argument after having received an adverse decision in this case. With Bertine

and Wells *in hand*, the state declined to argue inventory search (and therefore inevitable discovery) at the time these drugs were admitted into evidence. The state understood its burden at the time of trial, its witnesses were called, but failed to put forth evidence showing the search was made pursuant to an inventory search. This Court should not allow the state a second bite at the apple to produce evidence which the state merely assumes must exist. Indeed, it is illogical to suppose the state is in a better position to make the showing the state urges more than 5 years after these events occurred. This Court should decline to grant the state's petition for writ of certiorari.

Arizona v. Gant

While this case was on appeal in the Court of Appeals, the United States Supreme Court issued its opinion in Arizona v. Gant, *supra*. Counsel for respondent wrote to the Court of Appeals and informed it that she believed this case controlled the resolution of respondent's case. At oral argument, the case was extensively explored, and the opinion acknowledges the significance of that opinion for the resolution of this case. The state, in its request for a remand, is asking for an opportunity to retry its case. The Court should decline the opportunity to do so.

Additionally, at oral argument, the judges asked the state whether they should grant a remand to explore this issue. At that point, the state declined the Court of Appeals' invitation. If the state chooses to dispute this claim, respondent would respectfully request an opportunity to move to supplement the appendix with a transcription of the relevant portions of the oral argument held in this case on March 2, 2009. Respectfully, respondent asks this Court to deny the state's petition for writ of certiorari.

---

[3] Arizona v. Gant, 129 S.Ct. 1710 (2009).

CONCLUSION

For the preceding reason, respondent respectfully asks this Court to deny the state's petition for writ of certiorari.

Respectfully submitted,

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR RESPONDENT.

This 31st day of January, 2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Steven H. John, Circuit Court Judge

Opinion No. 4697 (S.C. Ct. App. filed 6/14/2010)
06-GS-26-1349.

THE STATE,

PETITIONER,

V.

DANNY CORTEZ BROWN,

RESPONDENT.

CERTIFICATE OF SERVICE

I certify that a true copy of the return to petition for writ of certiorari in this case have been served on Norman Mark Rapoport, Esquire and the SC Court of Appeals, this 31st day of January, 2011.

Kathy H Hudgins for
Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 31st day
of January, 2011.

Felicia K Berry (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 7, 2011

Appellate Defender Elizabeth A. Franklin-Best
South Carolina Commission
on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Brown, Danny Cortez

Dear Counsel:

The following Order has been endorsed on your Petition for Extension of Time in which to file the Return to the Petition for Writ of Certiorari out of time in the above entitled case on appeal.

"Granted.

Jean H. Toal C.J.
For the Court

By s/ Daniel E. Shearouse
Clerk

February 7, 2011."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,

CLERK

DES/lda

cc: Assistant Attorney General Mark R. Farthing

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
Steven H. John, Circuit Court Judge

Opinion No. 4697 (S.C. Ct. App. filed 6/14/2010)
06-GS-26-1349.

RECEIVED
FEB - 1 2011
S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

DANNY CORTEZ BROWN,

PETITIONER.

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE RETURN TO THE
PETITION FOR WRIT OF CERTIORARI OUT OF TIME

Counsel for Danny Cortez Brown, petitions the Court for an additional 3 days in which to file the return to the petition for writ of certiorari in this case out of time. In support of this petition, counsel shows:

1. The return to the petition for writ of certiorari was due to be filed with the Court on January 28, 2011.

2. The date to file the return was inadvertently overlooked and an extension request was not made.

3. Counsel for Mr. Brown, respectfully submits that good cause exists to warrant the granting of an additional extension of time.

4. Counsel is diligently working to keep up with her heavy case load. Counsel has not had time to complete the return in this case. As a result, counsel respectfully asks this Court for an additional 3 day extension of time to file the return.

5. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a 3 day extension, in which to file the return to the petition for writ of certiorari in this case out of time based upon the above exigent circumstances.

Respectfully submitted,

Elizabeth A. Franklin-Best
Appellate Defender

February 1st, 2011

I do not oppose:

Norman Mark Rapoport

GRANTED.

Jean H. Toal C.J.
For the Court

By _____
Clerk

February 7, 2011

The Supreme Court of South Carolina

The State, Petitioner,

v.

Danny Cortez Brown, Respondent.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2006-GS-26-01349

ORDER

The request for an extension to file the Return to Petition for Writ of Certiorari out of time is granted and extended until January 28, 2011. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Brenda J. Shealy
Chief Deputy CLERK

Columbia, South Carolina

January 5, 2011

cc: Assistant Attorney General Mark R. Farthing
Appellate Defender Elizabeth A. Franklin-Best

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County
Steven H. John, Circuit Court Judge

Opinion No. 4697 (S.C. Ct. App. filed 6/14/2010)
06-GS-26-1349.

RECEIVED
JAN 04 2011
S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

DANNY CORTEZ BROWN,

PETITIONER.

PETITION FOR EXTENSION OF TIME
IN WHICH TO FILE THE RETURN TO THE
PETITION FOR WRIT OF CERTIORARI OUT OF TIME

Counsel for Danny Cortez Brown, petitions the Court for an additional 30 days in which to file the return to the petition for writ of certiorari in this case out of time. In support of this petition, counsel shows:

1. The return to the petition for writ of certiorari was due to be filed with the Court on December 29, 2010.

2. The date to file the return was inadvertently overlooked and an extension request was not made.

3. Counsel for Mr. Brown, respectfully submits that good cause exists to warrant the granting of an additional extension of time.

4. Counsel is diligently working to keep up with her heavy case load. Counsel has not had time to complete the return in this case. As a result, counsel respectfully asks this Court for an additional 30 day extension of time to file the return.

5. Counsel is striving to limit the number of extensions requested. Counsel is attempting to complete the cases with the most number of extensions first.

5. Counsel makes this request in good faith and not for purposes of delay.

Counsel respectfully requests a 30 day extension, in which to file the return to the petition for writ of certiorari in this case out of time based upon the above exigent circumstances.

Respectfully submitted,

Elizabeth A. Franklin-Best
Appellate Defender

January 4th, 2011

I do not oppose:

~~Norman Mark Rapoport~~
Mark R. Farthing

HENRY MCMASTER
ATTORNEY GENERAL

November 24, 2010

Elizabeth A. Franklin-Best, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

Re: State v. Danny Cortez Brown

Dear Ms. Franklin-Best:

I am enclosing two copies of the Petition for Writ of Certiorari and Appendix, along with proof of service, in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General

MRF/erd
Enclosure

cc: ~~The Honorable Daniel E. Shearouse~~
(original and 6 copies enclosed)

Victim Services
(with enclosure)

The Supreme Court of South Carolina

The State, Petitioner,

v.

Danny Cortez Brown, Respondent.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2006-GS-26-01349

ORDER

The request for an extension to serve and file the Petition for Writ of Certiorari and Appendix is granted and extended until November 24, 2010. Pursuant to this Court's order dated March 18, 2009, any further extension request must be based on a showing of good cause.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Linda F. Stealy
Chief Deputy Clerk

Columbia, South Carolina

October 26, 2010

cc: Assistant Attorney General Mark R. Farthing
Appellate Defender Elizabeth A. Franklin-Best
The Honorable Tanya Gee

HENRY MCMASTER
ATTORNEY GENERAL

October 25, 2010

VIA HAND-DELIVERY
The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: State v. Danny Cortez Brown

Dear Mr. Shearouse:

The Petition for Writ of Certiorari in the above appeal is due to be served and filed October 25, 2010. However, due to a heavy workload, I am requesting a 30-day extension to file this document. This is the first extension request at this stage in the process, and it is not intended for the purpose of delay.

I appreciate your consideration of this request and ask that you hold the filing time in abeyance during the time in which this request is pending.

By copy of this letter, I am informing counsel for Appellant of this extension request.

Sincerely,

Mark R. Farthing
Assistant Attorney General

MRF/erd

cc: Elizabeth A. Franklin-Best, Esquire
Victim Services