

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Newberry County

FEB - 8 2013

The Honorable Brooks P. Goldsmith, Circuit Court Judge  
2000-CP-36-0051

S.C. Supreme Court

STEPHEN ANDREW BECKHAM,

PETITIONER,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

2011-204368

APPENDIX

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STATE OF SOUTH CAROLINA  
COURT OF COMMON PLEAS  
COUNTY OF NEWBERRY  
2000-CP-36-00051

Stephen Beckham  
vs.  
State of South Carolina

Lancaster, South Carolina  
August 16, 2011

Before the Honorable Brooks P. Goldsmith

APPEARANCES

For the Petitioner: Charles Gross  
For the State: Sally Elliott, Emery Smith  
Reported by: Michael C. Watkins  
Official Court Reporter

1 THE COURT: This is the matter of Steven Beckham vs.  
2 State of South Carolina, 2000-CP-36-51. We're here today on  
3 defendant's second motion to reopen the case and to reopen  
4 the record in the case and take additional testimony and to  
5 recuse the Office of the Attorney General. Let's see,  
6 Mr. Gross, are you ready to argue?

7 MR. GROSS: I am, Your Honor.

8 THE COURT: And Ms. Elliott, are you ready to proceed?

9 MR. GROSS: Your Honor, if I may introduce Emery Smith.  
10 Mr. Smith is here just in case you would prefer that I not  
11 argue the recusal motion or response the recusal motion so I  
12 just wanted to explain his presence and introduce him to  
13 Your Honor.

14 MR. SMITH: And I was here too, Your Honor, I believe  
15 back in February of 2008 when we argued some discovery  
16 issues then.

17 THE COURT: Seems like worlds away. Well, let's talk  
18 about that. What about that, Mr. Gross, the issue of  
19 recusal on the argument of the motion?

20 MR. GROSS: Your Honor, may I -- I have provided  
21 opposing counsel with a memo I wrote this morning if I may  
22 hand that up as well.

23 THE COURT: Certainly.

24 MR. GROSS: Your Honor, I think it probably is a good  
25 idea to have somebody else argue it. I have not had this

1 come up very often, I once moved to recuse Solicitor Jones  
2 and ended up with somebody from the attorneys general's  
3 office arguing it so I think that that's probably the  
4 correct procedure to proceed under.

5 THE COURT: Well, Ms. Elliott, Mr. Smith, do y'all wish  
6 to argue the point?

7 MS. ELLIOTT: I don't think it's necessary but Mr.  
8 Smith is here. And really it was an offer to Your Honor for  
9 Your Honor at Your Honor's discretion as to how you wish to  
10 proceed, I don't know if Mr. Smith has anything else he  
11 would like to add.

12 MR. SMITH: Your Honor, I think it's purely a matter of  
13 precaution for me to be any assistance that I could be in  
14 this hearing, but I think quite frankly it's unnecessary and  
15 really a bit ridiculous not to let Ms. Elliott respond to a  
16 motion to recuse based upon alleged conduct of her, she is  
17 the most appropriate one to address that. We're dealing  
18 with a very narrow issue here, we're not dealing with a  
19 broad spectrum of issues in this case, one issue, one  
20 incident that was brought to the Court's attention long ago,  
21 and Ms. Elliott ought to be able to address that. And quite  
22 frankly too, we believe that it would be best if Your Honor  
23 addressed the motion to reopen first, because if Your Honor  
24 chooses not to reopen this case then it moots the recusal  
25 issue and then we could proceed from there.

1 MR. GROSS: Well, I think that they are intertwined and  
2 I think that if her purpose is to respond to the basically  
3 the allegations of withholding discovery that's ultimately  
4 what we want under oath, Your Honor, so I don't think it  
5 would be appropriate for her to respond in a forum when  
6 she's not under oath and subject to cross examination.

7 MR. SMITH: Your Honor, she's already responded in  
8 writing on those issues I believe multiple times, and so for  
9 her to say something in an open courtroom on it would be  
10 nothing new. We're not dealing with a jury issue here, we  
11 don't have to have her presenting arguments or testimony to  
12 a jury. It simply is assertion based upon an issue of  
13 discovery of material that she, in fact, released to them.  
14 The question -- only question he's raised about is why she  
15 didn't do it earlier. It's very, very narrow and no reason  
16 why this Court cannot go on ahead and address the motion to  
17 reopen, and then if necessary address the recusal issue, and  
18 she ought to be able to address that subject to anything  
19 this Court should order about testimony.

20 THE COURT: I'm going to let her respond to the motion  
21 to reopen the record in the case. You know, on the issue of  
22 discovery we deal with it all of the time and we deal with  
23 that issue often times, more often than not, with the  
24 attorneys responding as to why they didn't get it done and  
25 why they can't get it done and so on and so on. I'll let

1 her stay in the game so to speak at least through the issue  
2 of reopening the record.

3 MR. GROSS: Thank you, Your Honor. Your Honor, I think  
4 it bears repeating that this case a year ago was moving  
5 towards a trial when the Office of Indigent Defense  
6 indicated they didn't have money to pay appointed counsel in  
7 civil cases or PCR cases and that's when Ms. Holt moved to  
8 be relieved, there was some proceedings and Ms. Schultz and  
9 I were appointed. And what has happened since that time,  
10 Your Honor, at every single step in the road they have been  
11 trying to press some sort of an advantage. They tried to  
12 press an advantage to make Ms. Holt go without being paid,  
13 then once we got in the case they tried to press the  
14 advantage to get it heard, they didn't want to continue the  
15 case. The Court continued it but only from August to the  
16 end of September and partly only because there was a  
17 chambers week that we could all get together on and have the  
18 case heard. Once that was over they pressed, "This has got  
19 to be done by the end of the year, got to be done by the end  
20 of the year." We had the court reporter expedite a  
21 transcript, we had depositions to supplement the record and  
22 then we had a very accelerated briefing process, much more  
23 accelerated than -- I don't have a lot of experience in  
24 similar matters, but the ones that I've been in have not  
25 been rushed that way, and my observation is is that they're

1 not normally rushed that way. What they were trying to do  
2 is conclude that discovery process and have that hearing and  
3 keep us on the defensive as long as possible, but once the  
4 briefing process was over it's like this case disappeared in  
5 their office, they've only responded to the things that we  
6 have filed since then. You asked them to prepare an order,  
7 it took them five months to prepare a proposed order, and  
8 our belief is that has been to gain an advantage. And when  
9 you go back and you look at the chronology in all of this,  
10 the jury sequestration manual was sent from Judge Floyd to  
11 their office and sat on Ms. Elliott's desk for months. She  
12 knew we were asking questions about security procedures, she  
13 knew and Ms. Kinzeler knew that they had a document that had  
14 forms to fill out for security for courthouse proceedings  
15 and they knew that when we were in the courtroom in Chester  
16 asking for that to be produced and when Director Lloyd was  
17 standing in front of you and saying it doesn't exist. I  
18 don't feel like they blew us off, I feel like SLED  
19 misrepresented to us because they knew that if we got that  
20 manual that that would lead us to be asking questions about  
21 other documents that haven't been turned over. Ms. Kinzeler  
22 and Ms. Elliott had that document and they knew that it  
23 would have contradicted what happened in that hearing that  
24 day. Well, when I inadvertently discovered that I had one  
25 from years ago but it wasn't the one that would have been in

1 the affect in Mr. Beckham's trial, they initially opposed  
2 that. And if you look at the -- if you look at the actual  
3 chronology they opposed that, but when we -- about the same  
4 time that our Freedom of Information Act letter landed at  
5 SLED, suddenly they produced it, "Oh, it has been sitting on  
6 our desk and it has information in here that you could have  
7 made use of in preparing for the hearing." And at the  
8 hearing it could have led to identifying -- if those  
9 documents had been produced it could have led to identifying  
10 other witnesses at the hotel where the sequestration took  
11 place that we could have called, because there was a form  
12 that listed the contact people at the hotel and part of  
13 their defense has been that the hotel dealt with them. But  
14 then what we find when SLED finally responded to our FOIA  
15 request, and I don't know if they had somebody checking the  
16 courthouse to see when we filed our lawsuit or I don't know  
17 if it was something that the Director Lloyd was told to get  
18 cleared off his desk before the new director came over, but  
19 in the last week that Reggie Lloyd, who was a witness in  
20 this case and appeared as a lawyer in this case, the last  
21 week he was in office he sent us the document and low and  
22 behold what we find out in the document that existed at the  
23 time of Mr. Beckham's trial was -- is that SLED had a policy  
24 that the Court could select SLED officers or other officers  
25 to be on the sequestration team, but if the SLED officers

1 what happened in Mr. Beckham's trial unbeknownst to him at  
2 the time in that you had the intrusions into the hotel  
3 rooms. And you had at least one juror, Mr. Galbraith,  
4 believing that SLED was doing it, and that was not only  
5 something he would draw an adverse inference from, that's  
6 something that we contend he would be intimidated by, and  
7 that's why we think it's important to get on the record  
8 exactly what the policy was. Because you say it's no  
9 secret, they still don't admit these document, they're still  
10 fighting them even though they produced them. They aren't  
11 admitting, they are what they are. And they certainly  
12 aren't coming here today to acknowledge that there was a  
13 procedure that was violated. So we need to nail that down  
14 unless they want to admit to that, which for months now they  
15 could have handled with one phone call to SLED. And then we  
16 need to get some testimony from Judge Floyd about where his  
17 document came from to try to determine why it's different  
18 from the one that SLED had. Was this a document that he  
19 produced from a file that he kept for this trial? Was this  
20 a document that he happened to have accumulated over the  
21 years that he produced? Was Judge Floyd aware that the  
22 procedures that SLED was following during the trial he  
23 presided over violated the written SLED policy at the time?  
24 So we need to do that. And then I think we need to get to  
25 the bottom of why it was withheld in the Attorney General's

1 office. I am satisfied it was withheld to gain a strategic  
2 advantage like they have tried to do at every step since I  
3 have been involved in this case. I want an opportunity to  
4 put those lawyers under oath and prove that to the Court.

5 THE COURT: Okay.

6 MR. GROSS: Beg the Court's indulgence for a moment.

7 (Break in proceedings.)

8 MR. GROSS: What Ms. Holt is asking is she wanted to  
9 make certain that you're aware of the FOIA. I don't know  
10 that it was attached to the document that we supplied for  
11 this motion but it was attached to some of our earlier  
12 files.

13 THE COURT: I was aware of it. Have I seen it? I'm  
14 not sure I've seen it if that's what you mean.

15 MR. GROSS: What we had done -- and this was attached  
16 to probably the motion to reconsider is what I think -- it  
17 is, the motion to reconsider, the last ruling that was on  
18 April 1st, we had -- when this became an issue we sent a  
19 FOIA request to SLED on February 16th. On February 23rd --  
20 I'm sorry, February 22nd there was a letter coming back from  
21 SLED acknowledging our request, then on the very next day on  
22 February 23rd after the State had already opposed our first  
23 motion to reopen the record, on February 23rd right after  
24 our FOIA request was acknowledged, that was when the  
25 attorney general produced the document that Judge Floyd had

1 given them in September, almost a full month before our  
2 hearing started. Then we wrote SLED again on March 22nd and  
3 there was at least one or two other letters after that that  
4 weren't attached to that motion. We eventually prepared a  
5 lawsuit that was filed in Newberry County to enforce the  
6 Freedom of Information Act request, and it would appear that  
7 the service of our lawsuit crossed with them actually  
8 responding to our FOIA request. And like I said, I don't  
9 know if they were checking to see when the lawsuit was filed  
10 because we had threatened to file it, or if it was something  
11 Director Lloyd was told to clean up and clear off of the  
12 deck before the new director came in, but the timing is  
13 suspicious that it came in this last week.

14 THE COURT: When did you file the lawsuit?

15 MR. GROSS: I filed the lawsuit -- I can pull it up and  
16 tell you -- it was in June, and I'm not -- the date on the  
17 signature where I signed it was June 24th and it might have  
18 been -- I think it was filed within a few days of June 24th,  
19 Your Honor.

20 THE COURT: And then when was the document received  
21 from SLED?

22 MR. GROSS: That document -- I don't think that  
23 document was received at SLED before they responded to --

24 THE COURT: No, that's not what I mean, I didn't write  
25 it down. They responded --

1 MR. GROSS: The date they responded?

2 THE COURT: Did you say it was about the same time?

3 MR. GROSS: Yeah. I can't -- the cover letter was  
4 June 27th and it was postmarked June 28th.

5 THE COURT: But they weren't served by that time,  
6 you're just saying it's coincidental.

7 MR. GROSS: No. They would not have received -- the  
8 effort to serve them would have crossed in the mail.

9 THE COURT: Go ahead. I'm sorry, I interrupted you.

10 MR. GROSS: I think the timing is in part suspicious  
11 because that was the last week in June was when Director  
12 Lloyd was leaving and somebody else was coming in and I  
13 could imagine that there was kind of a not so subtle request  
14 to clean up your unfinished business before I take over, I  
15 think that would be not uncommon in transition like that.

16 THE COURT: Anything else?

17 MR. GROSS: Not unless you have any questions that you  
18 would like for me to try to answer.

19 THE COURT: Not at this stage. Let me go ahead and  
20 hear from the attorney general.

21 MS. ELLIOTT: Thank you, Your Honor. May it please the  
22 Court? I would first like to respond to -- I have some  
23 other arguments I would like to make, but just basically to  
24 respond to the arguments from Mr. Gross. As far as his  
25 accusation that we have tried to press this case, as Your

1 Honor knows this case has been pending for 11 and a half  
2 years, it has been pending longer than any other non-capital  
3 death case that I can recall in the state since the early  
4 eighties. We have not pressed it, we have not put on a  
5 full-court press, we are just trying to get it included and  
6 resolved so that we can get the matter moved on to the  
7 appeal or to whatever other steps Mr. Beckham wishes to take  
8 in regard to this matter, or our office wishes to take in  
9 regard to this matter. As far as trying to take an  
10 advantage, Counsel Holt's motion to be relieved as counsel,  
11 as Your Honor knows, I supervise all post conviction relief  
12 cases in the state except the capital cases, when that memo  
13 from indigent defense was circulated to the defense bar  
14 indicating that there would be no more funds we could not --  
15 I could not take any position other than that -- other than  
16 to oppose that request. Unfortunately Ms. Holt's was the  
17 first -- first attorney in the state to make that request  
18 and you can imagine what would have happened to the post  
19 conviction relief cases in the state if everything would  
20 have ground to a halt. So the position that I took, or our  
21 office took in this case regarding Ms. Holt's request had  
22 nothing to do with an attempt to gaining an advantage, it  
23 had to do with the policy of our office and the position we  
24 had to take in order to make sure there was a timely and  
25 orderly processing of post conviction relief actions, it

1 certainly was not and I would not have done that to Ms. Holt  
2 otherwise. As far as scheduling the case for a hearing, as  
3 Your Honor knows before Mr. Gross was involved I think that  
4 we had had several conversations with Ms. Holt about  
5 scheduling and we were all trying to accommodate everyone's  
6 schedule. We did -- the case was continued once and we were  
7 just trying to get it resolved quite frankly while I had an  
8 attorney in the office who was capable of handling the case.  
9 It has nothing do with attempting to gain an advantage, it's  
10 a fact that as Your Honor knows I have a lot of turnover in  
11 post conviction relief and I had a very capable attorney who  
12 could handle this matter and it has languished for a very  
13 long time and it needed to be concluded.

14 THE COURT: Wasn't Ms. Kinzeler scheduled -- somewhere  
15 in all of that wasn't she scheduled to leave your office?

16 MS. ELLIOTT: Yes, Your Honor. She left January 7th  
17 and joined the solicitor's office in Charleston, and had she  
18 still been in the office the order would have been written a  
19 lot faster. And it has taken a long time for me to do it  
20 and it's basically because I have trained about three new  
21 attorneys over the summer beginning about April or May and  
22 it has nothing to do with -- it probably has kind of fallen  
23 off the map and it's mainly because it has fallen to me to  
24 take care of it and simply -- I supervise over half of the  
25 cases in our office and just did not have the resources to

1 get it done any more timely. It was nothing again to  
2 attempt to take an advantage of the applicant or his  
3 attorney, and I apologize to the Court for the length of  
4 time it took for me to get that order to you. And if I may  
5 look through my notes and respond if that's okay.

6 THE COURT: Go ahead.

7 MS. ELLIOTT: And mainly my concern is that these  
8 allegations or these arguments are speculation and they're  
9 unfounded and calls into question -- just as Mr. Gross did  
10 with SLED, it calls into question the integrity of our  
11 office. And I will submit to the Court that I have no idea  
12 what those documents were from Judge Floyd, I still don't  
13 know what they were other than through his testimony it was  
14 pretty clear that the judges got together to try to come up  
15 with some forms to try to create uniform in jury  
16 sequestration matters, and I'm assuming but do not know that  
17 the documents he sent us probably was a packet that was  
18 prepared during that process but I don't know, I don't know  
19 that. I certainly did not know what it was when I saw it, I  
20 had no idea -- I do not handle death penalty cases, I have  
21 not handled a death penalty PCR case since about 1996 in the  
22 Elmore case and none of those cases that I have ever been  
23 involved with had juror sequestration issues and the forms  
24 weren't even in use at that time. So I had no idea what I  
25 had other than it just appeared to be blank copies of the

1 forms that were actually filled out and used in Mr.  
2 Beckham's trial. So I had blank forms when we already had  
3 in evidence all of the completed forms that were  
4 specifically used and designated for use by Judge Floyd in  
5 Mr. Beckham's trial. It wasn't until Mr. Gross sent the  
6 2000 jury sequestration manual that I actually did my  
7 response and it was later when I was cleaning out my office  
8 and ran across that material again and looked at it that I  
9 realized that it looked very familiar to that particular  
10 manual. The cover page doesn't say manual, doesn't say  
11 SLED, I didn't know what it was and I did not intentionally  
12 withhold it to gain an advantage, I simply didn't know what  
13 it was or that it would have any importance to this case and  
14 I would submit that it does not. I don't know anything  
15 about the FOI lawsuit and when SLED sent anything that did  
16 not involve me so I can't respond to that other than to say  
17 I don't know who would tell Director Lloyd to do something  
18 since he obviously was the director of SLED, I don't know  
19 while he was acting as director that anybody had authority  
20 to tell him to do something. And again as far as the SLED  
21 agents serving as sequestration agents, the SLED agency  
22 providing jury sequestration agents and the agency also  
23 having agents testify during trial, I don't think that is an  
24 unusual procedure of practice, but again I'm not involved in  
25 dealt penalty cases. I just know that Judge Floyd was aware

1 of it, Jack Swerling was aware of it and knew about it, he  
2 testified about it in his depositions and it was not an  
3 unusual occurrence. In fact, Judge Floyd testified that he  
4 always used SLED agents for jury sequestrations. I believe  
5 in this case he testified he brought in two highway patrol  
6 troopers at some point during the trial to stand in the  
7 courtroom for security, but he testified that he always used  
8 SLED agents for his sequestrations. And again, I will just  
9 submit that Mr. Gross has no basis to allege that I withheld  
10 those documents for strategic advantages and would submit  
11 there was no strategic advantage gained. If you look at --  
12 Your Honor has already ruled on -- denied Mr. Beckham's  
13 first motion to reopen the record based upon the submission  
14 of a 2000 jury sequestration manual. The Court had before  
15 it also at that time also the document received by our  
16 office from Judge Floyd that I disclosed. Your Honor denied  
17 the motion. I would submit today that the 1996 blank forms  
18 manual is what it's entitled provides -- is exactly the same  
19 thing as the 2000 manual. If you'll look at it, the only  
20 difference is it adds a provision about using retired SLED  
21 agents which Director Lloyd testified about at the motion  
22 hearing or stated or discussed at the motion hearing. It  
23 adds some cover pages for instructional information and  
24 forms to be used and security has a different title, but  
25 other than that some things have been moved around. It

1 basically provides the same guidelines for instructions, and  
2 I use instructions in quotes, the entire manual, the entire  
3 blank procedure form is only an instructional guide the  
4 agent is to share with the judge. The memo from Captain  
5 Weber indicated that he shared a protocol with the judge and  
6 received instructions from the judge as to what the judge  
7 wanted. The judge wanted agents who did not have any  
8 investigational knowledge about the Beckham trial or the  
9 incident to serve as jury sequestration agents. The jury  
10 sequestration order very specifically -- and all of the  
11 forms very specifically indicated Judge Floyd's instructions  
12 to SLED as to how he wanted the jury sequestration to  
13 proceed. The manual is an internal manual that was  
14 developed and is offered to the judge. It is ultimately the  
15 judge who decides how the sequestration should run, what he  
16 wants done and that's exactly what happened in this case and  
17 that's what we found in Mr. Beckham's jury sequestration  
18 file that was provided by SLED that has been introduced into  
19 evidence to this Court. There is nothing that has been  
20 newly offered that provides any reason for this Court to  
21 again look at all of these issues that you have already  
22 denied in the first motion to reopen, it is just another  
23 bite at attempting to reopen the record based on the same  
24 information Your Honor had before the Court at the time you  
25 denied the first motion to reopen. In the end of the day

1 even if the internal guidelines, policies and procedures of  
2 SLED, even if they weren't followed, we submit that it is of  
3 no moment. There has been no showing of prejudice as to how  
4 any of that would have impacted the outcome of this case,  
5 and we would submit that the Court should not reopen the  
6 record in this matter. And I will be happy to answer any  
7 questions that Your Honor might have.

8 THE COURT: I don't have any questions. Mr. Gross, in  
9 response?

10 MR. GROSS: Your Honor, she says that she didn't know  
11 it was the manual, but if you look at the first page of the  
12 document that she proffered on February 23rd, the day after  
13 SLED acknowledged our FOI request, it says table of  
14 contents, it lists three sections and at the bottom it says,  
15 "This manual is intended to be a guide to aide the lead  
16 agent in planning -- in conducting his or her duties." It  
17 does say it should be recognized and individual judges may  
18 have specialized instructions as to procedures. But there  
19 is no doubt, Judge, that this is a manual even without the  
20 cover page attached to it, there is no doubt. It's also no  
21 doubt that it contains more than just the forms. Section  
22 one is the instructional information as to the recommended  
23 procedures, that's not something that we had been given in  
24 discovery in all of the depositions. Section two is the  
25 forms, section three has to deal with security and defendant

1 issues which is the very thing that we have been in court in  
2 Chester asking for and Director Lloyd said didn't exist, not  
3 only was he wrong, they sat silent having this document that  
4 on the front page contradicted the SLED director. She  
5 talked about how Judge Floyd testified in his deposition  
6 about the judges having gotten together from that era, the  
7 judges that handled a lot of the death penalty cases in the  
8 nineties and come up with procedures, and Judge Floyd went  
9 on for pages talking about that, and one of the things that  
10 I want to know the answer to is is, "Judge Floyd, when I  
11 asked you that question, why didn't you tell me that there  
12 was a set of forms, a copy of which you had sent to the  
13 attorney general's office on September 2nd, less than a  
14 month before our hearing?" And I tell you, I can predict  
15 the answer, I can predict the answer that it is his  
16 experience as a trial court judge in South Carolina, his  
17 experience as a federal court judge in South Carolina that  
18 he expected that they immediately turned it over like they  
19 are required to do and he thought that I had it and he was  
20 trying to give additional information. Well, now I want to  
21 go back and say why is this different, why are these two  
22 documents different, because the instructions that come in  
23 that section, number one, say that this jury sequestration  
24 shouldn't have been handled the way that it was handled.  
25 And I think those are fair questions and I think that if we

1 had gone back in February and been able to ask those  
2 questions we would have been done long before now.

3 THE COURT: Well, let me -- I'm not sure I follow  
4 something. You're saying that sequestration should have  
5 been handled a different way than it was handled, that it  
6 should have been handled more along the guidelines of this  
7 manual that we're talking about. But this is the same one  
8 you said that he had and he --

9 MR. GROSS: No, he had a different one. I mean, if you  
10 take -- if you take the -- Your Honor, if you take these  
11 pages from what Ms. Elliott proffered which came from Judge  
12 Floyd which is in this hand and this other one which is what  
13 SLED proffered, it's different.

14 THE COURT: Okay.

15 MR. GROSS: The instructions are different, and the  
16 instructions in this -- the one that SLED sent us says that  
17 agents on this detail must not have been involved with the  
18 case or appear as a witness. Agents assigned to this detail  
19 shall be referred to as court security so as not to draw an  
20 inference in the event SLED employees take the witness  
21 stand. And certainly --

22 THE COURT: Now, when is that one dated? I'm sorry.

23 MR. GROSS: This one --

24 THE COURT: Is it the one that SLED produced in --

25 MR. GROSS: It does not have a date but it has the

1 forms in it that have the 2/96 designation from February of  
2 '96 which would have been months before Mr. Beckham's trial.  
3 And the question that we were asking for was a copy of the  
4 1996 jury sequestration file because the 2000 version  
5 referred to a February 1996. And so in response to that  
6 this is what Margaret Knox out of the Office of General  
7 Counsel, the same lady who testified in the hearing, sent  
8 us.

9 THE COURT: You're saying that the 1996, we'll call it  
10 a manual, is different than which one?

11 MR. GROSS: I'm saying it's different than the one that  
12 Ms. Elliott sent us that Judge Floyd sent her and Ms.  
13 Kinzeler a month before the hearing.

14 THE COURT: And tell me, what's the significance of  
15 there being a difference?

16 MR. GROSS: Well, the significance is is -- well,  
17 partly I need to ask Judge Floyd that, that's partly why we  
18 are here. But the significance is is that had this  
19 procedure been followed in the one that SLED finally  
20 produced to us, had it been followed those jurors in  
21 Mr. Beckham's trial would never have known that they were  
22 being guarded by SLED and that they would not have had an  
23 opportunity to filter that through how they were viewing  
24 witness testimony in the trial. And the reason that SLED  
25 says they shouldn't know that is because so as not to draw

1 an inference in the event SLED employees take the witness  
2 stand. SLED knew that that was a danger.

3 THE COURT: And the one that Judge Floyd sent you  
4 doesn't have any reference to any of that?

5 MR. GROSS: Right. To be clear the one that Judge  
6 Floyd sent the attorney general doesn't have any reference  
7 to that. And to go back to one point that Ms. Elliott made  
8 is what's different between now and when she produced this,  
9 number one, she didn't produce this until she knew or likely  
10 knew that we had asked for it from SLED because of the  
11 timing of it, but this information that we have now  
12 discovered about what SLED's was at the time is new. And I  
13 can guarantee you that had we had this in September when we  
14 tried this case this would have been front and center, we  
15 would have been asking SLED agents about it, we would have  
16 been asking Judge Floyd the differences, this would have  
17 been huge in the presentation of our case, Your Honor.

18 THE COURT: Maybe I'm still missing it. Where is the  
19 prejudice in the case? That's what I'm missing. Judge  
20 Floyd didn't order the procedure as far as we know, right?

21 MR. GROSS: As far as we know he didn't but we need to  
22 ask him that.

23 THE COURT: Everybody agrees he had the authority to  
24 order it or not order it; isn't that correct?

25 MR. GROSS: Right. But is there a reason why he was

1 given one document over the other or would this refresh his  
2 memory? I don't know where this second document came from.  
3 And where the prejudice comes in, and this gets into the  
4 merits of the case, we believe that there is a presumption  
5 of prejudice and the order that they have prepared doesn't  
6 apply -- and I'm still analyzing it -- but it does not apply  
7 that presumption of prejudice. And I think that one of the  
8 reasons why we should be entitled to that presumption of  
9 prejudice is born out by this document that SLED knew that  
10 people could draw an inference if just a chemist from a drug  
11 lab or just somebody who tested a bullet had testified and  
12 here we had the whole case being a product of a SLED  
13 investigation.

14 THE COURT: I don't know the answer to this but I'm  
15 just assuming that -- weren't there two of the best criminal  
16 defense lawyers in the state at that time at any rate  
17 representing him?

18 MR. GROSS: Who didn't have this.

19 THE COURT: What I'm talking about though is presumably  
20 they would know that there might be an adverse inference or  
21 not had the judge done this or not done this.

22 MR. GROSS: And I would be willing to go back and ask  
23 Mr. Swerling that, we might need to reopen his deposition.  
24 Because one of the things that Mr. Swerling said was he did  
25 not know about these contacts and he did not -- with the

1 jurors through the invasions of their privacy in the hotel  
2 rooms and he did not know that Juror Galbraith believed that  
3 SLED was searching his room during the same trial that SLED  
4 was investigating the case. Put it this way, if that didn't  
5 raise an issue that would have raised an issue and I think  
6 they would have been complaining about it. And I think if  
7 they would have had this manual and were looking at that  
8 then they would have been raising all kinds of cane with  
9 Judge Floyd about why that was going on, particularly after  
10 the invasions of privacy took place.

11 THE COURT: But don't you acknowledge that Judge Floyd  
12 wouldn't have had to follow any of the manuals of SLED?

13 MR. GROSS: What I know is that Judge Floyd used the  
14 order from the SLED manual without alternating other than  
15 crossing out the word form. And I want to -- I imagine that  
16 if Judge Floyd -- his testimony was is that these procedures  
17 were developed from a process that he was involved in, I  
18 imagine that he would have followed that procedure,  
19 particularly if he had the language that was in here and  
20 that's what I want to ask him, that's why we need to reopen  
21 the record.

22 MS. ELLIOTT: If I may just briefly, Your Honor, Judge  
23 Floyd specifically testified he was not involved in the  
24 development of these forms, that he was not serving on that  
25 particular circuit court committee at the time. He said

1 that at the time there were a core group of circuit court  
2 judges who handled death penalty matters and that they  
3 shared forms and developed things, but that at the time --  
4 if you can take his testimony as that SLED and the Circuit  
5 Judges Advisory Committee on this matter developed these  
6 suggested procedures and forms, Judge Floyd specifically  
7 said he was not on that committee at the time just as a  
8 matter of clarification and we would submit that Judge Floyd  
9 didn't have to follow the guides and instructions. I think  
10 that if Your Honor will review all of the manuals or blank  
11 form packages that are before Your Honor, it's pretty  
12 specific that's it is intended only as a guide to the  
13 circuit court judge to assist the circuit judge, but it is  
14 ultimately up to the circuit court judge to elect what that  
15 judge wants to do and what forms to use, what forms to  
16 employ and what procedures to employ including whether or  
17 not he is going to request SLED to provide any courtroom  
18 security, that also was not mandatory. And in the earlier  
19 whatever the material Judge Floyd provided indicates that  
20 either the sheriff or the judge could request courtroom  
21 security. So this is all -- at the end of the day it is of  
22 no moment because Judge Floyd issued very specific orders  
23 about what he wanted done, the manual -- and I use that in  
24 quotes -- the materials that we have before us are precatory  
25 materials that have been produced for the assistance of the

1 circuit court judge. It is not mandatory, Judge Floyd was  
2 not required to use it and we would submit that these forms,  
3 these manuals are of no moment in this proceeding. I think  
4 that was all I wanted to say, I think, Your Honor.

5 MR. GROSS: I think we're splitting hairs. My  
6 recollection is is that Judge Floyd and the other judges  
7 that tried these cases were involved in a process. What  
8 remains is is that Judge Floyd followed that process by  
9 using parts of it, and I find it difficult to believe that  
10 if he's given a document that says that SLED is concerned  
11 about the inference that could be drawn by their people  
12 guarding the jurors when their other employees are  
13 testifying, I find it difficult to believe that Judge Floyd  
14 wouldn't follow that. And I find it even more difficult to  
15 believe that Judge Floyd wouldn't follow a process that was  
16 recommended and being followed by other circuit court  
17 judges. And if they want to try to prove that Judge Floyd  
18 was off reservation then I think they can have an  
19 opportunity to ask him that at the same time that we get an  
20 opportunity to ask him the questions that we want to ask  
21 him.

22 MS. ELLIOTT: Your Honor, I hate to beat a dead horse,  
23 just one more point, and I apologize. You know, Judge Floyd  
24 I think through his deposition and I think through the  
25 testimony of the other witnesses, the other attorney

1 witnesses in this case, was very specific and very adamant  
2 about how he wanted this particular trial to run. He chose  
3 how he wanted to proceed with the jury sequestration. He  
4 was not required to accept anything in any of these manuals  
5 and we would submit that he issued specific orders and  
6 directions for how this case should proceed and the  
7 sequestration should proceed and there's no knowing of  
8 anything else. These manuals are of no moment.

9 THE COURT: Mr. Gross, I'm going to deny your motion to  
10 reopen the record. I do not find that there was any rush to  
11 judgment in this case or rush to have the case pushed to a  
12 trial to gain an advantage. I find that the SLED manuals or  
13 policies of SLED for whatever reason if the judge knew about  
14 them or didn't know about them, it was the judge's  
15 discretion as to whether to accept the recommendations of  
16 SLED or not accept the recommendations of SLED, the manuals  
17 are merely guides to be used for the Court. Whether there  
18 was one in existence at that time or whether it was given to  
19 the judge or not I don't see that it makes any difference.  
20 I also don't see any prejudice in the case. And for those  
21 reasons I'm going to deny the motion. Anything further?

22 MS. ELLIOTT: Your Honor, we would move to dismiss the  
23 motion to recuse as being moot.

24 THE COURT: I'm sorry?

25 MS. ELLIOTT: We would move for Your Honor to dismiss

1 the motion to recuse as being moot.

2 THE COURT: Mr. Gross?

3 MR. GROSS: You know, Your Honor, we would object to it  
4 being dismissed because the matter still remains is that  
5 they committed a discovery violation and that still has not  
6 ever really been addressed by this Court.

7 THE COURT: Well, there's not a motion before the Court  
8 for sanctions or anything; is that right?

9 MR. GROSS: Well --

10 MS. ELLIOTT: Your Honor, there is not.

11 MR. GROSS: Actually, Your Honor, that's not correct.  
12 The sanctions that we want is we want the -- even now they  
13 have not acknowledged the truth of that document, and we  
14 think that that document should be in the record. And the  
15 sanction that we want is that we want the record reopened  
16 and we want the document authenticated for the record so  
17 that it can be so considered by this Court and on appeal and  
18 that's what we're trying to get, because there would be no  
19 procedure to go back and reopen the record. There would be  
20 no reason to go back and reopen the record but for their  
21 discovery violation. You fine them, you strike their  
22 answer, I guess you could strike their answer, but if you  
23 fine them for violating the discovery rules that does  
24 Mr. Beckham no good. What we want is to get a full and  
25 complete record that has this document entered.

1 MS. ELLIOTT: Your Honor, the documents are in the  
2 record through all of the various motions Mr. Gross has  
3 filed, and there has not been a request for sanctions so we  
4 would submit that matter is not before Your Honor.

5 MR. GROSS: For the record, is she conceding and  
6 admitting that the document that was produced by SLED is the  
7 manual that was in existence at the time of Mr. Beckham's  
8 trial? That's what we're trying to get to.

9 MS. ELLIOTT: I don't know. The 1996 manual or the  
10 2000? The documents --

11 MR. GROSS: The 2000 obviously wouldn't be. The one  
12 that Margaret Knox from SLED produced, the one that we're  
13 here about today, is the State of South Carolina admitting  
14 that that was the document that was in effect at the time of  
15 Mr. Beckham's trial? That is the sanctions that we are  
16 trying to get.

17 MS. ELLIOTT: Your Honor, that has nothing to do with  
18 my being recused as a witness, we would submit it is not  
19 before the Court, and I can't because I don't know the  
20 answer to that.

21 MR. GROSS: The question was was there a motion for  
22 sanctions, and that's the sanctions we are asking for and  
23 we've asked for in two motions.

24 THE COURT: Well, the motion that I have is to recuse,  
25 the motion I have is not for sanctions.

1 MR. GROSS: I believe that in one of our prior motions,  
2 and I could try to go back and find it, or one of our  
3 pleadings we cited Rule 37. But the answer is is that we're  
4 not asking you to fine them or do anything like that, what  
5 we're asking for is for the record to be reopened and this  
6 document to be put in the record and to be properly  
7 authenticated among other things, and that has been the  
8 subject of two motions to reopen the record that were  
9 prompted by the discovery violation.

10 MS. ELLIOTT: I'm looking at the motion that he filed  
11 and I don't see any reference to any of that, maybe I have  
12 missed it.

13 MR. GROSS: Your Honor, our motion to reconsider, which  
14 I have saved as an April 1st document, does have it in that  
15 we were asking for an evidentiary presumption from the  
16 documents that we believe should have been filled out and  
17 included in the record, probably were included that had been  
18 taken out. So what we want is we want the benefit of having  
19 this document in the record and if she's telling us that  
20 it's in the record then that doesn't get us everywhere we  
21 want to be but that does get us down the road. Just getting  
22 back to the point, we have never sought out in this process  
23 to look to have the Court fine the attorney general's  
24 office, what we have sat out to do is to try to find the  
25 truth and get a complete record and that's what we've asked

1 the Court to do and we think that's the appropriate  
2 sanction.

3 THE COURT: I don't see a sanction referred to like  
4 that in the rule. Actually I'm not sure the rule even fits  
5 this case.

6 MR. GROSS: The rules to me seem to be more designed to  
7 handle the traditional common pleas, the civil jury trial  
8 kind of situation. We certainly think -- I can tell you  
9 what's coming next, if you ultimately sign an order denying  
10 Mr. Beckham relief we're going to be asking for the next  
11 remedy which is an entirely new trial and so this is short  
12 of this remedy. And so think it well within the Court's  
13 discretion to punish the party that withheld the discovery  
14 by putting the document that was withheld into the record  
15 and that led us to get another document from SLED and that  
16 should be in the record too. And if it is in the record and  
17 they're not contesting what they are, but they've been  
18 contesting what they are.

19 MS. ELLIOTT: I don't know what they are, I've never  
20 known what they are. And he has not requested sanctions.  
21 Those prior motions have been ruled on by Your Honor and he  
22 is now trying to make requests that are not before the  
23 Court.

24 THE COURT: I agree and I'm going to deny the request,  
25 Mr. Gross.

1           MR. GROSS: I don't feel like I'm making a new request,  
2 I feel like all I'm doing is trying to get the record  
3 reopened and that was requested in the motion that we are  
4 here on today.

5           THE COURT: And I will deny that motion. And for all  
6 of the same reasons deny the motion to recuse. Is there  
7 anything else we need to take up today? Ms. Elliott, if  
8 you'll prepare an order consistent with the rulings of the  
9 Court. Court is adjourned.

10                               (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins, Official Court  
2 Reporter for the Sixth Judicial Circuit of the State of South  
3 Carolina, do hereby certify that the foregoing is a true,  
4 accurate and complete transcript of record of the proceedings  
5 had and evidence introduced in the trial of the captioned  
6 case, relative to appeal, in the Court of Common Pleas for  
7 Newberry County, South Carolina, on the 16th day of August,  
8 2011.

9 I do further certify that I am neither of kin, counsel,  
10 nor interest to any party hereto.

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February 3, 2013

  
Michael C. Watkins  
Court Reporter.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Newberry County

The Honorable Brooks P. Goldsmith, Circuit Court Judge  
2000-CP-36-0051

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STEPHEN ANDREW BECKHAM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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Certificate of Service

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The undersigned attorney hereby certifies that a copy of the Appendix, was delivered to Respondent's counsel, Ms. Salley Elliott, electronically to [SELLIOTT@SCAG.GOV](mailto:SELLIOTT@SCAG.GOV), with her consent, on February 8, 2013.



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February 8, 2013