

STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

Appeal from Richland County  
Court of Common Pleas

AUG 16 2019  
SC Court of Appeals

The Honorable Doyet A. Early, III, Circuit Judge

Appellate Case No. 2016-001727

Adele J. Pope..... Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina, and  
James Brown Legacy Trust, by Russell Bauknight, its Trustee..... Respondents.

**APPELLANT'S REPLY TO ATTORNEY GENERAL'S RETURN TO  
PETITION FOR REHEARING**

Adam T. Silvernail (Bar No. 80219)  
Law Office of Adam T. Silvernail, LLC  
1905 Marion Street (29201)  
Post Office Box 7995  
Columbia, South Carolina 29202-7995  
(803) 779-1770  
[adam@silvernaillawfirm.com](mailto:adam@silvernaillawfirm.com)

*Counsel for Appellant*

Appellant submits this reply to the return on the South Carolina Attorney General (“AG”) to her Petition for Rehearing in this matter.

As an initial matter, Appellant submits that the facts set out in her Petition were properly cited and found in the record. Because the AG identifies no specific fact(s) which are alleged to be outside the record, Appellant does not undertake to reiterate or rehash the facts, but does incorporate her Petition herein where relevant.

Instead, the AG argues that this Court should find the entire case mooted in light of its assertion that it has produced all responsive documents. The AG argues that Appellant should have to specifically identify documents to be produced, a suggestion which is completely unsupported by statutory or case law regarding the FOIA (as is apparent by the AG’s failure to cite a single statute or case in support of its position). The AG appears to acknowledge in footnote 3 of its Return that it has not produced any responsive documents in possession of its counsel, Sweeny, Wingate and Barrow, P.C. (“SWB”), because Appellant did not specifically request documents from that firm. Appellant respectfully submits that the FOIA does not place upon her the burden of knowing or alleging where each responsive document is held, and in fact, appears to place the burden on the public body of producing responsive documents beyond those in the direct possession of the public body. S.C. Code Ann. §30-4-20(c) sets forth:

"Public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body.

Appellant submits that the AG has the obligation of producing documents “prepared, owned, [or] used” by the AG, even if same are in the current possession of SWB, which it employs. The AG’s position, as set out in its Return, appears to indicate that any person requesting documents or information from a public body is tasked with instructing the public body on where to find its

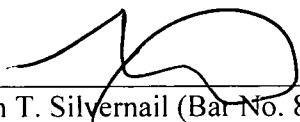
own public documents. This conflicts with the plain language of the FOIA statutes, and Appellant submits that the AG's argument in its Return gives a non-hypothetical example of why her Petition should be granted.

Because the AG has never given a proper response to the 2011 FOIA request, setting out what documents he possessed and what documents would be withheld under a *specific* exemption, it would be impossible for Appellant to have to go fishing for each specific document, including its location. Appellant again asks that this Court grant her Petition for Rehearing and direct the AG to fully respond as set out in S.C. Code Ann. §30-4-30(c).

### **Conclusion**

For the foregoing reasons and those set forth in her Petition for Rehearing herein, Appellant respectfully moves this Court to grant a rehearing on the points above or, alternatively, to substitute this Court's June 19, 2019 opinion with one which directs that the AG fully respond to the FOIA request, and produce all requested documents and remand the matter for a final determination of attorneys' fees and costs.

Respectfully submitted,



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Adam T. Silvernail (Bar No. 80219)  
Law Office of Adam T. Silvernail, LLC  
1905 Marion Street (29201)  
Post Office Box 7995  
Columbia, South Carolina 29202-7995  
(803) 779-1770  
[adam@silvernailfirm.com](mailto:adam@silvernailfirm.com)

*Counsel for Appellant*

June 27, 2019

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In the Court of Appeals

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Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Judge

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**PROOF OF SERVICE**

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I certify that I have served the Reply to Attorney General's Return to Petition for rehearing on all Respondents by mailing a copy of same on August 16, 2019, addressed to his attorney of record as follows:

J. Emory Smith, Jr., Esquire  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
*Counsel for Respondent Attorney General*

Keith M. Babcock, Esquire  
Ariail E. King, Esquire  
David L. Paavola  
Lewis & Babcock, LLP  
P.O. Box 11208  
Columbia, South Carolina 29211  
*Counsel for Respondent James Brown Legacy Trust*

  
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Adam T. Silvermail

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