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SEP 25 2020

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY **SC Court of Appeals**

Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

The Honorable L. Casey Manning, Circuit Court Judge

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Appellate Case No.: 2018-002229

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RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

Adele J. Pope, and Robert L. Buchanan, Jr. Defendants,

Of whom Adele J. Pope is Appellant.

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**AFFIDAVIT OF CHARLES E. CARPENTER, JR.**

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PERSONALLY APPEARED BEFORE ME Charles E. Carpenter, Jr., who being  
duly sworn, deposes and says:

1. My name is Charles E. Carpenter Jr. My South Carolina Bar Number is #1133. I am over the age of 21 years and am of sound mind.
2. I have worked with Attorney Adam Silvernail on this and some related cases. I am familiar with his work ethic and his desire to get things done correctly.
3. This case and other litigation deriving from the estate of James Brown is of a length and volume of documents that I have rarely seen in my career of many years.
4. I have seen the good and diligent work of Adam Silvernail:
  1. To prepare a brief that he thought was in compliance with the rules.
  2. To Receive a Motion to Strike or Amend his Brief.
  3. To Receive an Order from the Court to correct and file and Amended Brief.
  4. Prepare an Amended Brief in response to the courts' ruling
  5. In an attempt to cooperate in getting the brief in a form that was not objectionable, submit a draft of that amended brief to counsel Mark Gende of SWB. Copy attached as **Exhibit A**.
  6. Instead of a cooperative response, Counsel sent a letter that not only declined Adam's invitation but took the extra and unnecessary step to deliver an insult. Copy attached as **Exhibit B**.
  7. Submit his Amended Brief in his Second attempt to comply with the courts rules.
  8. After his attempt at cooperation, which was declined, he receive another Motion To Strike The Amended Brief that potentially could have been resolved by agreement had counsel accepted the offer of Adam to examine a draft of the amended brief
  9. And now he receives not only another motion to Strike but also a Rule to Show Cause to be held in contempt.
5. On December 25, 2006 James Brown died.
6. On June 17, 2020 the South Carolina Supreme Court expressed its concern that:

“ The ongoing litigation since Brown's passing has thwarted his expressed wish that his estate be used for educational purposes, a fact confirmed by the parties in this case, who acknowledged that no scholarships have been paid for students to date, a point we find both extraordinary and lamentable.”
7. But we still have another Motion to hold Adam Silvernail in Contempt for some inadvertent errors in amending his brief. Over a decade of litigation has

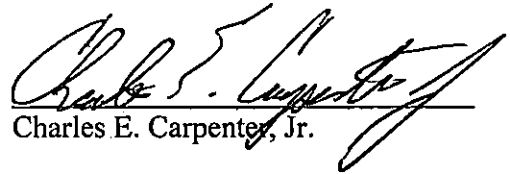
produced a tremendous amount of evidence and legal authorities that is difficult to deal with.

8. The motion status in the trial court is complex and extraordinarily stale. The Trial Judge has retired. That has created the anomaly in that the S.C. Court of Appeals declined to decide an appeal from several Orders in the underlying litigation (which were pending as the separate appeal numbered 2017-1899) and has remanded it to the trial court because it had never ruled on Motions to Reconsider. Some of the Motions to Reconsider have been pending for so long that there is no realistic expectation that they will be made "final" by orders on pending Motions to Reconsider. This appeal also involves several rulings which were made by the now-retired Trial Judge.
9. For this reason and others, Counsel for the Appellant is preparing a Petition for a Writ of Certiorari and ask the S.C. Supreme Court to review case 2017-1899 now, rather than consume much additional time that would result from a remand.
10. Adam Silvernail is working diligently to correct the recent inadvertent errors. Therefore, there is no need at this time for this court to decide the Motion to Strike because it is being complied with.
11. I have practiced law in South Carolina for more than 40 years, including extensive appellate practice before this Court. The inadvertent errors which are the subject of the Motion to Strike and Petition for Rule to Show Cause occur from time to time, even with diligent counsel. In my experience, they are usually corrected upon notice from opposing counsel that an oversight appears to have occurred. I have never known typographical errors or inadvertent errors in citation to be the subject of motions for harsh sanctions or contempt, and I do not believe Respondents have put


forth any basis for their requested relief in this instance.

12. The motion to hold Adam Silvernail in Contempt should be denied. He has done nothing that deserves any finding of contempt. The Petition to Issue a Writ of Certiorari should be granted by the S.C. Supreme Court, and this case resolved.
13. In the alternative, this Court could exercise its discretion and request that the S.C. Supreme Court take this case now on Certification from this court because of the novel and long standing rulings in the trial court that have never been substantively addressed in the ten years this case has occupied the time and attention of the Courts.
14. The Respondents' recent conduct, including the current motion and petition, has delayed the Court's consideration of the important issues presented in this case. Their repeated seeking of harsh sanctions for non-violations of rules and harmless errors is, I believe, against the spirit of the Rules of Civil Procedure, the Appellate Court Rules and the norms of our profession.

FURTHER DEPONENT SAYETH NOT.

  
Charles E. Carpenter, Jr.

SWORN TO BEFORE ME THIS  
25<sup>th</sup> day of September, 2020.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission expires: 6/27/29

# EXHIBIT A

From: Adam Silvernail adam@silvernailfirm.com  
Subject: Bauknight v. Pope, Appellate Case No. 2018-2229  
Date: September 8, 2020 at 3:32 PM  
To: Mark V. Gende MVG@swblaw.com, Ken B. Wingate kbw@swblaw.com  
Bcc: Adele Pope adele@popelawfirm.com



Dear Mark and Ken:

Attached please find a PDF of our Amended Final Brief. I ask that you confirm everything addressed in your motion to strike has been addressed, so that we can put this matter to bed.

Note that there are a handful of citations from the initial brief to documents which did not end up in the Record, possibly because of the same issue which led to the incorrect final brief in the first place. I have reverted those to the original references.

These items were included in your chart but unmentioned in your motion, which appears primarily preoccupied with the omitted references to the Supplemental Motion.

I intend to file this before the close of business tomorrow, so I ask that you let me know if you see any issue before 4 o'clock tomorrow.

Adam

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**Law Office of Adam T. Silvernail, LLC**  
1905 Marion Street (29201)  
Post Office Box 7995  
Columbia, South Carolina 29202-7995  
803/779-1770



# EXHIBIT B

**From:** Adam Silvernail adam@silvernailfirm.com  
**Subject:** Re: Bauknight v. Pope, Appellate Case No. 2018-2229  
**Date:** September 9, 2020 at 9:47 AM  
**To:** Mark V. Gende MVG@swblaw.com  
**Cc:** Ken B. Wingate KBW@swblaw.com, Aaron J. Hayes AJH@swblaw.com, Adele Pope adele@popelawfirm.com, Charles Carpenter charlie@carpenterappeals.com, Daryl Williams dwilliams@gertzandmoore.com, Jeff Smith wjstv@mindspring.com



Dear Mark:

I am disappointed that you find my invitation to avoid needless motions practice to be a 'burden.' As you recall, you sifted through our previous brief to locate every single change; made no attempt at contacting me or any other counsel for Mrs. Pope to resolve the issues; and filed a motion 30 days later, accusing us of an elaborate scheme to manipulate the Court of Appeals by omission of certain citations to a document which was still cited multiple times in the brief.

Because we anticipate that you will once again carefully review our brief to see if you can find any matter with which to take issue, I thought we might be united in allowing that review prospectively, rather than burdening your clients, mine, and especially the Court with another completely avoidable round of motions practice. Given your unwillingness to collaborate, however, I will proceed with filing and serving the brief; I trust you will find upon your later review that it addresses all points noted in your motion.

Take care.

Adam

On Wed, Sep 9, 2020 at 8:59 AM Mark V. Gende <MVG@swblaw.com> wrote:

Adam:

I decline your invitation to shift the burden for the integrity of your brief from yourself and the other attorneys working on this matter for Mrs. Pope to us.

Mark V. Gende, Esq.  
Sweeny, Wingate, & Barrow, PA  
1515 Lady Street  
Columbia, South Carolina 29201  
803.256.2233 – Phone  
803.256.9177 – Facsimile

**From:** Adam Silvernail <adam@silvernailfirm.com>  
**Sent:** Tuesday, September 08, 2020 3:33 PM  
**To:** Mark V. Gende <MVG@swblaw.com>; Ken B. Wingate <KBW@swblaw.com>  
**Subject:** Bauknight v. Pope, Appellate Case No. 2018-2229

Dear Mark and Ken:

Attached please find a PDF of our Amended Final Brief. I ask that you confirm everything addressed in your motion to strike has been addressed, so that we can put this matter to bed.

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And

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Of whom Adele J. Pope is Appellant.

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**PROOF OF SERVICE**

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The undersigned counsel for Appellant certifies that he has served a copy of each of the following:

1. Appellant's Consolidated Return to Motion to Strike and Petition for Rule to Show Cause;
2. Affidavit of Adam T. Silvernail;
3. Affidavit of Charles E. Carpenter, Jr., with Exhibits;
4. Affidavit of Thomas H. Pope III;
5. Affidavit of Daryl L. Williams;
6. Affidavit of Adele J. Pope, with Exhibits; and
7. Appellant's Corrected Final Brief


on all Respondents on the date shown below, by hand-delivering a copy of the same to their counsel, addressed as follows:

Kenneth B. Wingate  
Mark V. Gende  
Sweeny, Wingate & Barrow, P.A.  
1515 Lady Street  
Columbia, SC 29201  
Telephone: (803) 256-2253  
[kbw@swblaw.com](mailto:kbw@swblaw.com)  
[mvg@swblaw.com](mailto:mvg@swblaw.com)

*Counsel for Respondents*

Alan Wilson, Attorney General  
Robert D. Cook, Solicitor General  
J. Emory Smith, Jr., Deputy Solicitor General  
PO Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3680  
[esmith@scag.gov](mailto:esmith@scag.gov)

*Counsel for Respondent Attorney General*



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Adam T. Silvernail  
*Counsel for Appellant*

September 25, 2020