

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Gerald C. Smoak, Sr., Circuit Court Judge

Opinion No. 3693 (S.C. Ct. App. filed November 17, 2003)

Evening Post Publishing Co., d/b/a The Post and Courier,
and Ms. Parthinea Snowden, as Personal Representative of the
Estate of Edward Snowden, Deceased, Plaintiffs,

of whom Evening Post Publishing Co., d/b/a
The Post and Courier Petitioner,

v.

City of North Charleston Respondent.

REPLY BRIEF OF PETITIONER

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QUESTION ACCEPTED FOR REVIEW

Did the Court of Appeals err by deciding that the facts of this case fall squarely within *Turner v. North Charleston Police Department*, 290 S.C. 511, 351 S.E.2d 583 (Ct. App. 1986)?

REPLY

In reply, Petitioner wishes to address some of the conclusions reached by Respondent in its Brief. On page 9, Respondent states, “[D]espite its best efforts, The Post and Courier cannot convincingly argue that release of the tapes against the Solicitor’s desires would not harm the City of North Charleston.” If the harm to the City is so apparent, the City could have explained the nature of the harm.

Respondent’s argument involving the Rules of Professional Conduct on page 10 of its Brief is misplaced. This was covered in the Brief of the Appellant. (See, Appendix, Tab 1, page 9) The newspaper did not request the public document from attorneys. It requested the public document from the City of North Charleston, a public body.

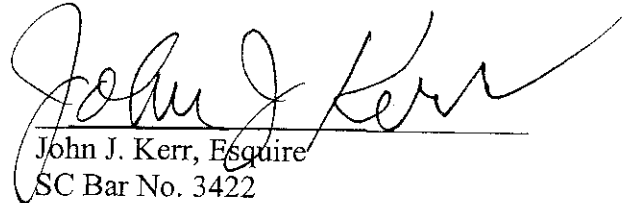
Respondent again reaches an unsupportable conclusion in its argument I. C. 2. on page 11. The conclusion: “Obvious harm would result from publicizing evidence prior to trial. Mass media dissemination of evidence, . . . could impact jury selection, prosecution strategy, and even the opportunity for a meaningful and fair defense.” What could happen when the public is given information available to criminal defendants is limited only by the imagination. Respondent’s conclusory argument is similar to that made to support the closing of public courtrooms. That argument has been refuted by this Court on many occasions. Petitioner incorporates its argument from its Brief under the sub-title, “Equivalent to court closure cases.” (See, Appendix, Tab 1, page 8)

Petitioner respectfully requests that this Court consider procedural guidelines similar to the guidelines it has handed down in court closure cases. (See, Appendix, Tab 1, page 12, "Guidelines are needed") Closing a courtroom and closing a public record for the conclusory reasons in this case are analogous. In both cases, the public's right to public information is denied and should not be tolerated in a free society.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that the Supreme Court reverse the decision of the Court of Appeals and conclude that Petitioner was entitled to the 911 tape recording pursuant to the FOIA, as there could be no "premature" release of the requested public document under the facts of this case.

December 30, 2004



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