

Response in Opposition to Motion for a Stay of Execution

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S.C. SUPREME COURT

Attachment 4

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FREDDIE EUGENE OWENS,

APPELLANT

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF ISSUES ON APPEAL..... vii

STATEMENT OF THE CASE 1

ARGUMENT

I. The trial court lacked subject matter jurisdiction of the murder charge, as the murder indictment failed to allege the essential element of malice aforethought5

II. The trial court erred in admitting evidence of Owens’ alleged involvement in other crimes October 31 and November 1 in the guilt phase of his trial..... 7

III. The trial court erred in admitting Owens’ February 16 statement in the sentencing phase, where the investigation into the incident at the detention center was not yet complete and the facts of that incident had not yet been fully developed, and further erred in refusing to continue the sentencing phase after ruling evidence of this incident admissible.....13

IV. The trial court erred in admitting Owens’ February 16 statement in the sentencing phase, where such evidence was not within the ambit of the state’s notice of evidence of aggravation and where the state’s supplemental notice was not filed and served within the time allowed by statute21

V. The trial court erred in admitting Owens’ February 16 statement in the sentencing phase, where that statement was obtained in violation of Owens’ rights under the Fifth and Fourteenth Amendments to the United States Constitution and under the South Carolina Constitution.25

VI. The trial court erred in admitting Owens’ February 16 statement in the sentencing phase, where that statement was obtained in violation of Owens’ rights under the Sixth and Fourteenth Amendments to the United States Constitution and under the South Carolina Constitution32

VII. The trial court erred in denying the defense motion for a new trial based on after-discovered evidence.....36

VIII. The trial court erred in sentencing Owens for possession of a firearm in the commission of a violent crime, where South Carolina law expressly prohibits imposition of such sentence in a case in which the death penalty is imposed..... 39

CONCLUSION40

TABLE OF AUTHORITIES

CASES

Arizona v. Roberson, 486 U.S. 675 (1988)..... 28, 29

Blackburn v. Alabama, 361 U.S. 199 (1960)..... 16

Brewer v. Williams, 430 U.S. 387 (1977)..... 33

Browning v. State, 320 S.C. 366, 465 S.E.2d 358 (1995)..... 5

Caldwell v. Mississippi, 472 U.S. 320 (1985)..... 17

Doyle v. Ohio, 426 U.S. 610 (1976)..... 31

Eddings v. Oklahoma, 455 U.S. 104 (1982)..... 18

Edwards v. Arizona, 451 U.S. 477 (1981) 28, 29

Estelle v. Smith, 451 U.S. 454 (1981)..... 27

Ex parte Johnson, 522 So.2d 234 (Ala. 1988)..... 30, 31

Finley v. State, 219 S.C. 278, 64 S.E.2d 881 (1951) 4

First Union Nat’l Bank v. Hitman, Inc., 306 S.C. 327, 411 S.E.2d 681 (Ct. App. 1991),
affirmed, 308 S.C. 421, 418 S.E.2d 545 (1992)..... 4

Gardner v. Florida, 430 U.S. 349 (1977)..... 16, 17, 18

Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983)..... 37

Hinson v. State, 297 S.C. 456, 377 S.E.2d 338 (1989)..... 6

Hutto v. Ross, 429 U.S. 28 (1976)..... 30

Illinois v. Perkins, 496 U.S. 292 (1990) 33

Jackson v. Denno, 378 U.S. 364 (1964) 2

Johnson v. State, 319 S.C. 62, 459 S.E.2d 840 (1995) 5

Maine v. Moulton, 474 U.S. 159 (1985)..... 33, 34, 35

<i>McNeil v. Wisconsin</i> , 501 U.S. 171 (1991).....	28, 29, 35
<i>Michigan v. Jackson</i> , 475 U.S. 625 (1986).....	33, 34
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	passim
<i>Moran v. Burbine</i> , 475 U.S. 412 (1986).....	passim
<i>Morgan v. United States</i> , 304 U.S. 1 (1938).....	16
<i>Parag v. Baby Boy Lovin</i> , 333 S.C. 221, 508 S.E.2d 590 (Ct. App. 1998)	4
<i>Patterson v. Illinois</i> , 487 U.S. 285 (1988)	35, 36
<i>Raley v. Ohio</i> , 360 U.S. 423 (1959).....	31, 32
<i>Skipper v. South Carolina</i> , 476 U.S. 1 (1986)	16
<i>State v. Adams</i> , 322 S.C. 114, 470 S.E.2d 366 (1996)	8, 9, 11, 12
<i>State v. Brooks</i> , 235 S.C. 344, 111 S.E.2d 686 (1959), <i>cert. denied</i> , 365 U.S. 300 (1961).....	10, 11
<i>State v. Campbell</i> , 317 S.C. 449, 454 S.E.2d 899 (Ct. App. 1994), <i>cert. denied</i> , July 26, 1995	11, 12
<i>State v. Carter</i> , 323 S.C. 465, 476 S.E.2d 916 (Ct. App. 1996)	11, 12
<i>State v. Conyers</i> , 268 S.C. 276, 233 S.E.2d 95 (1977).....	20
<i>State v. Council</i> , 335 S.C. 1, 515 S.E.2d 508, <i>cert denied</i> , 528 U.S. 1050 (1999).....	20
<i>State v. Cutro</i> , 332 S.C. 100, 504 S.E.2d 324 (1998)	9, 10, 12
<i>State v. Diddlemeyer</i> , 296 S.C. 235, 371 S.E.2d 793 (1988).....	23
<i>State v. Evans</i> , 307 S.C. 477, 415 S.E.2d 816 (1992).....	6
<i>State v. Gaskins</i> , 284 S.C. 105, 326 S.E.2d 132, <i>cert. denied</i> , 471 U.S. 1120 (1985).....	6
<i>State v. George</i> , 323 S.C. 496, 476 S.E.2d 903 (1996), <i>cert. denied</i> , 520 U.S. 1123 (1997).....	33
<i>State v. Goolsby</i> , 275 S.C. 110, 268 S.E.2d 31, <i>cert. denied</i> , 449 U.S. 1037 (1980)	28

State v. Hornsby, 326 S.C. 121, 484 S.E.2d 869 (1997) 16

State v. Hough, 325 S.C. 88, 480 S.E.2d 77 (1997)..... 11

State v. Howard, 295 S.C. 462, 369 S.E.2d 132 (1988), *cert. denied*,
490 U.S. 1113 (1989)..... 34

State v. Huggins, 336 S.C. 200, 519 S.E.2d 574 (1999), *cert. denied*,
528 U.S. 1172 (2000)..... 23

State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999), *cert. denied*,
__ U.S. __, 120 S.Ct. 1434 (2000)..... 19

State v. Humphries, 325 S.C. 28, 479 S.E.2d 52 (1996), *cert. denied*,
520 U.S. 1268 (1997)..... 24

State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999) passim

State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923)..... passim

State v. Munn, 292 S.C. 497, 357 S.E.2d 461 (1987) 5

State v. Neeley, 271 S.C. 33, 244 S.E.2d 522 (1978) 28

State v. Nix, 288 S.C. 492, 343 S.E.2d 627 (Ct. App. 1986) 9, 10

State v. Norris, 285 S.C. 86, 328 S.E.2d 339 (1985)..... 6

State v. Owens, 293 S.C. 161, 359 S.E.2d 275 (1987)..... 20

State v. Parker, 294 S.C. 465, 366 S.E.2d 10 (1988) 6

State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987) 30, 31

State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993)..... 37

State v. Ray, 310 S.C. 431, 427 S.E.2d 171 (1993) 23

State v. Register, 323 S.C. 471, 476 S.E.2d 153 (1996), *cert. denied*,
519 U.S. 1129 (1997)..... 33

State v. Riddle, 291 S.C. 232, 353 S.E.2d 138 (1987)..... 24, 25

State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990) 30

<i>State v. Smith</i> , 322 S.C. 107, 470 S.E.2d 364 (1996)	13
<i>State v. Spann</i> , 334 S.C. 618, 513 S.E.2d 98 (1999).....	37
<i>State v. Stokes</i> , 279 S.C. 191, 304 S.E.2d 814 (1983)	9, 11
<i>State v. Tabory</i> , 262 S.C. 136, 202 S.E.2d 852 (1974).....	6
<i>State v. Timmons</i> , 327 S.C. 48, 488 S.E.2d 323 (1997).....	9, 13
<i>State v. Torrence</i> , 305 S.C. 45, 406 S.E.2d 315 (1991).....	passim
<i>State v. Wilder</i> , 306 S.C. 535, 413 S.E.2d 323 (1991).....	35
<i>Woodson v. North Carolina</i> , 428 U.S. 280 (1976).....	18
<i>Wray v. State</i> , 288 S.C. 474, 343 S.E.2d 617 (1986).....	6
STATUTES	
S.C. Code Ann. § 16-3-10.....	6
S.C. Code Ann. § 16-3-20.....	22, 23, 24
S.C. Code Ann. § 16-23-490.....	39, 40
S.C. Code Ann. § 17-19-10.....	5
S.C. Code Ann. § 17-19-20.....	5
S.C. Code Ann. § 17-19-30.....	6
RULES OF COURT	
Rule 403, South Carolina Rules of Evidence.....	passim
Rule 404, South Carolina Rules of Evidence.....	7, 8
CONSTITUTIONAL PROVISIONS	
S.C. Const. art. I, § 3	16, 27, 31
S.C. Const. art. I, § 11	5
S.C. Const. art. I, § 12.....	27
S.C. Const. art. I, § 14.....	32

U.S. Const. amend. V 27, 32, 35
U.S. Const. amend. VI passim
U.S. Const. amend. VIII..... 18
U.S. Const. amend. XIV passim

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court lack subject matter jurisdiction of the murder charge because the indictment failed to set forth all the essential elements of the offense of murder?
2. Did the trial court err in ruling that evidence of Owens' alleged involvement in other crimes October 31 and November 1 was admissible in the guilt phase of his trial?
3. Did the trial court err in admitting Owens' February 16 statement in the sentencing phase, where the investigation into the death of his cellmate at the detention center was not yet complete and the facts of that incident had not yet been fully developed, and in not granting a continuance on the same basis once it determined that evidence related to that incident would be admitted, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, Article I, § 3 of the South Carolina Constitution, and Rule 403 of the South Carolina Rules of Evidence?
4. Did the trial court err in admitting Owens' February 16 statement in the sentencing phase, where this evidence was not within the ambit of the state's initial notice of evidence of aggravation and where the state's supplemental notice was not filed and served within the time allowed by S.C. Code Ann. § 16-3-20?
5. Did the trial court err in admitting Owens' February 16 statement in the sentencing phase, where that statement was the product of a representation by state officials that it would not be used in this proceeding, in violation of Owens' rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, §§ 3 and 12 of the South Carolina Constitution?
6. Did the trial court err in admitting Owens' February 16 statement in the sentencing phase, where that statement was obtained in violation of Owens' right

to counsel under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 14 of the South Carolina Constitution?

- 7. Did the trial court err in denying the defense motion for a new trial based on after-discovered evidence, where information learned after the sentencing proceeding revealed that the statement of Owens admitted in that proceeding was not accurate?**
- 8. Did the trial court err in sentencing Owens for possession of a firearm in the commission of a violent crime, where South Carolina law expressly prohibits imposition of such sentence in a case in which the death penalty is imposed?**

STATEMENT OF THE CASE

Appellant, Freddie Eugene Owens, was indicted in Greenville County for armed robbery, murder, use of a firearm in the commission of a violent crime, and conspiracy to commit armed robbery, all arising from the November 1, 1997, robbery of a Speedway convenience store and the shooting of its attendant, Irene Graves. R. v. 1, pp. 1-6. A co-defendant, Steven Andra Golden, was indicted for the same offenses. Other individuals were indicted in connection with this incident, but the state contended that it was Owens and Golden who were physically present in the store and committed the robbery and murder.

Owens, Golden, and other co-defendants were also charged with various crimes in connection with alleged robberies or attempted robberies of other businesses in the Greenville area on September 24 and 29, October 17 and 31, and November 1, 1997.

On March 3, 1998, the state notified both Owens and Golden of its intent to seek the death penalty. R. v. 1, p. 7. The Supreme Court appointed the Honorable Alexander S. Macaulay to preside over the trial of this case. On January 8, 1999, the state served a notice of the items it intended to introduce in the sentencing phase as evidence of aggravation. R. v. 7, p. 3337.

Judge Macaulay heard pre-trial motions December 22, 1998. Among other issues addressed at that time, the judge reviewed the motions of both defendants to exclude from evidence any references to the defendants' alleged involvement in other crimes. He ruled that the evidence of crimes occurring September 24, September 29, and October 17 would be excluded, but that evidence of other crimes occurring October 31 and November 1 could be admitted under Rule 403 of the South Carolina Evidence Rules. R. v. 1, p. 73. The court