

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

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Case No. 2012-213734

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THE STATE, ..... Respondent,  
v.  
JAMES LAMONT MOORE, ..... Appellant.

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**Petition for Rehearing**

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Pursuant to Rules 219 and 221(a) of the South Carolina Appellate Court Rules, Appellant James L. Moore (“Moore”) hereby files this petition for rehearing. This matter came before the Panel for oral argument on January 6, 2015 at 10:00 AM. Moore respectfully submits that rehearing and/or issuance of a new opinion reversing the trial court and granting a new trial in favor of Moore is warranted in this action.

The motion is predicated on the basis that the Panel’s opinion in this matter overlooked or misapprehended several matters of fact and law. Thus, rehearing should be granted.

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## ARGUMENT

### **I. The Panel overlooked South Carolina Supreme Court precedent regarding improper admission of character and prior bad act evidence.**

In the opinion, the Panel found that although “evidence of other crimes, wrongs, or acts, is not admissible to prove the character of a person in order to show action in conformity therewith[] it may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” *State v. Moore*, Op. No. 2015-UP-098 (S.C. Ct. App. filed March 4, 2015).

*German v. State*, 325 S.C. 25, 478 S.E.2d 687 (1996) and *State v. Bostic*, 307 S.C. 226, 414 S.E.2d 175 (1992) is the guiding precedent applicable to Moore’s appeal. Both cases are factually and legally analogous to the issues presented in Moore’s appeal. However, the Court’s March 4, 2015 Order does not appear to account for this precedent.

In *German v. State*, two agents performing undercover drug operations received information that Mr. German “was distributing or selling crack cocaine.” 325 S.C. at 26, 478 S.E.2d at 688. The Supreme Court held that the statements were improper comments on Mr. German's character because the statements specifically referenced Mr. German engaging in the distributing or selling of crack. The Supreme Court explained that statements offered to prove *why* the police began surveillance were not necessarily improper because the statements in *Brown* referred to “drug activity in the apartment complex in which the defendant lived,” yet statements specifically targeted at the defendant’s prior history as a drug dealer were improper. *German*, 325 S.C. at 28, 478 S.E.2d at 688. (emphasis added).

In *State v. Bostick*, the Supreme Court held that the defendant was unduly prejudiced by a police officer's statement that he believed the defendant had made drug

sales from the same location at a prior time. 307 S.C. 226, 414 S.E.2d 175. In *Bostick*, the State argued that even if the statements were improper, the defendant was not prejudiced the testimony. The Court rejected this argument, stating:

The issue the jury was called upon to decide was whether the individual hired by the police had bought the crack cocaine from the defendant or from some other person he had confused with the defendant. Quite obviously, testimony that the police had information the defendant had previously sold crack cocaine would tend to influence the jury in deciding whether he did so on the occasion in question.

*Bostick*, 307 S.C. at 228-29, 414 S.E.2d at 176. The State further argued the exceptions to Rule 404 of the South Carolina Rules of Evidence applied, which the Court also rejected. 307 S.C. at 229, 414 S.E.2d at 177. The Court reinforced that the State cannot attack the character of the defendant unless the defendant himself first places his character in issue. *Id.*

In this case, the State's video exhibit is replete with improper statements about Moore that bear upon his character and prior bad acts such that the only logical conclusion that Moore was a perpetual solicitor or distributor of drug-sales. The lead detective called to testify at trial, by the State, confirmed as much. (ROA 139).

In the video capturing the alleged drug-buy, the confidential informant narrated the event to investigating officers and stated, "that the same guy [Appellant] that be in the yard all the time, be yelling at me." (State's Exh. 3 at 9:40-10:30). The confidential informant then stated to Appellant, "I pass you all the time some time" but that "I done call [my] boy down the street" for drugs. (*Id.* at 11:00-11:25). On the stand, the State's officer interpreted this portion of the video for the jury, explaining that the confidential informant "normally go[es] down the street" to buy drugs . . . to "make it look normal." (ROA 139).

Later in the video, the confidential informant promised to “holler back” to Appellant with the intention of calling in the future for drug purchases. Here again, the State’s witness testified that this is what the confidential informant meant. On the stand, the detective interpreted this portion of the video for the jury, namely that where the confidential informant says that he “will holler back” . . . [the confidential informant is] explaining . . . [n]ext time I come through I’ll call you” to purchase drugs. (ROA 139).

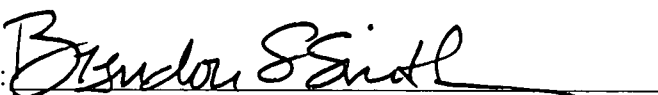
Appellant's trial counsel understood the meaning of this vernacular and the context in which it was used, as admitted by the Solicitor and interpreted by the State's witness, which is precisely why Appellant's counsel in pre-trial objected to all of the above statements as “unfairly prejudicial and a prior bad act, 404(b), and improper comment on the character.” (ROA 27, 33, 42).

The video statements, coupled with the officer’s interpreting testimony, had the “tend[ancy] to influence the jury in deciding whether [Moore distributed drugs] on the occasion in question” causing Moore unfair prejudice that substantially outweighed any probative value of the evidence. *Bostick*, 307 S.C. at 228-29, 414 S.E.2d at 176.

### **Conclusion**

Based on the foregoing, the Panel should grant rehearing to issue a new opinion granting Moore a new trial.

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March 19, 2015

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CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Petition for Rehearing

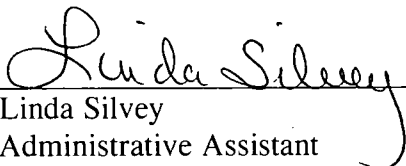
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Linda Silvey  
Administrative Assistant

March 19, 2015

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March 19, 2015

## Via Hand Delivery

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1015 Sumter Street - 5th Floor  
Columbia, SC 29201

RE: State of South Carolina v. James Lamont Moore  
Appellate Case No. 2012-213734  
Our File No.: 38769/01511

Dear Ms. Kitchings:

Please find attached an original and six copies of Petition for Rehearing. Please file the original and four copies and return a clocked-in copy of each to us via our courier.

Very truly yours,

  
Brandon S. Smith

BSS:ljs

Attachments

cc: Christina J. Catoe, Esquire  
Robert Michael Dudek, Esquire

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