

**STATE OF SOUTH CAROLINA
IN SUPREME COURT**

**Appeal from Anderson County
J. Cordell Maddox, Circuit Court Judge**

07-GS-04-1342, 07-GS-04-1343, 07-GS-04-1344

Case No. 2012-210506

STATE OF SOUTH CAROLINA,

Respondent,

v.

FRANCES MOORE,

Petitioner

RETURN TO PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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PETITIONER'S QUESTIONS PRESENTED FOR REVIEW

1.

Did the trial court err when it failed to grant a mistrial where the co-defendant's counsel elicited damaging evidence against the Petitioner on cross-examination of a state witness and where, while objecting to this cross-examination itself, the State used what should have been Bruton redacted evidence in its closing argument?

2.

Was it error for the Solicitor to argue against allowance of testimony of a co-defendant which involved the Petitioner , but then argue the weight and significance of the same testimony in closing in a way that prejudice the Petitioner's right to a fair trial?

RESPONDENT'S STATEMENT OF THE CASE

The Petitioner, Frances Moore was indicted by the Anderson County Court of General Sessions for murder and possession of a firearm (2007-GS-04-1341), and criminal conspiracy (2007-GS-04-1343). The charges arose from the 1999 murder of Paul Stephens.¹

On May 12, 2009, the matter was called to trial before the Honorable J. Cordell Maddox, presiding judge. The prosecution was handled by Assistant Solicitor Lauren S. Hogan and T. Matthew Bradley. Frances Moore was present and represented by J. Calhoun Pruitt of the Anderson County Bar. Garvin Duvall was jointly tried and represented by Robert Gamble and Matthew Perkins of the Anderson County Public Defenders Office.

On May 15, 2009, the jury returned guilty verdicts on all charges. Moore was sentence to consecutive terms of thirty (30) years for murder, five (5) years consecutive for possession of a firearm during the commission of a violent crime and five (5) years for criminal conspiracy. R. 723, Tr. p. 716, ll. 10-16. This was for an aggregate forty (40) year sentence. R. 723, Tr. p. 716, l. 21. The Petitioner made a post-trial motion for new trial on June 16, 2009. R. 723-730, Tr. 716-723.

A notice of appeal was served on July 6, 2009. The Petitioner was represented in the appeal by John Delgado of the Richland County Bar. In the Final Brief of Appellant, the Petitioner raised the following issues:

1. Did the trial court err in failing to disallow the State from eliciting testimony of a witness that implicated Appellant through non-confronted testimony?
2. Did the trial court err in failing to grant a mistrial where the non-confronted testimony was exacerbated by counsel for the co-defendant in his cross of the same witness?

¹ A co-defendant, Garvin Duvall was indicted for murder, possession of a firearm during the commission of a violent crime and criminal conspiracy on Indictments 2007-GS-04-1218; 1219. The Court of Appeals affirmed his convictions in an unpublished opinion on February 29, 2012. State v. Garvin Duvall, Unpublished Op. No. 2012-UP-132 (S.C.Ct. App. February 29, 2012). His case is currently pending a petition for writ of certiorari before this Court filed June 29, 2012.

Final Brief of Appellant, p. 1. The Respondent State of South Carolina, through below-signed counsel made a Final Brief of Appellant. Oral argument was held on December 7, 2011.

On February 1, 2012, the South Carolina Court of Appeals issued its unpublished opinion affirming the judgments of conviction pursuant to Rule 220(b)(1) and cited authorities. State v. Francis J. Moore, Unpublished Opinion No. 2012-UP-059 (S.C. Ct. App. February 1, 2012). In the opinion, the Court of Appeals addressed the issues in the following manner:

She argues the trial court erred in overruling her objections and denying her motion for a mistrial after witness testimony relayed accounts between the witness and her codefendant implicating her. Specifically, she maintains the rulings permitted violations of her Confrontation Clause rights. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: Davis v. Washington, 547 U.S. 813, 821 (2006) (stating the right to confrontation "bars 'admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant . . . had a prior opportunity for cross-examination.'" (quoting Crawford v. Washington, 541 U.S. 36, 53-54 (2004))); State v. Davis, 371 S.C. 170, 178, 638 S.E.2d 57, 61 (2006) (holding witness testimony relaying a co-conspirator's account implicating the defendant did not violate the defendant's confrontation rights because the account "clearly was made outside of an investigatory or judicial context" and therefore was not testimonial).

State v. Moore, supra.

The Petitioner made a timely petition for rehearing on February 10, 2012. In the petition, Moore asserted that the Court of Appeals had mistakenly and erroneously misconstrued the thrust of her argument in that the testimony of a non-testifying co-defendant was related to a third party and mistakenly relied upon Davis v. Washington, 547 U.S. 813 (2006) in denying relief. On March 2, 2012, the Court of Appeals denied the petition for rehearing.

On June 13, 2012, the Petition for Writ of Certiorari was received. This Return follows.

The State's Version of the Facts

On June 30, 1999, Paul Stephens was shot twice with the same gun - once in the back of the head and once in the back - resulting in his death. The circumstances revealed that had left his car and

shot outside of it on a trail of Baugh Road. His car was sent on fire in the passenger area. The circumstances ultimately lead to Garvin Duvall and the Petitioner, Frances Moore, the victim's ex-mother in law.

On June 27, 1999, while at a party, Duvall speaks with an acquaintance J.W. Stansell and tells him that he was going to kill Paul Stephens because Stephens was going to get arrested and would be a rat. (Evidence was presented that he had been an informant with police previously). Duvall described his plan which involved luring Stephens to an area and shooting him and setting his car on fire and spreading drugs around to make it look like a drug deal gone bad. Duvall also unsuccessfully solicited the help of Stansell who turned him down. As an enticement, Duvall advised Stansell that Moore was willing to pay \$2000 for the murder.

Stephens reportedly had been living in fear of Frances Moore. He had been frequently sharing information with friends, including a recent girlfriend, that if he was shot in the head and his car set on fire, that his mother in law should be investigated. ROA 301-308.

On the day of the death, Stephen's wife Debra, Frances Moore's daughter, was interviewed by Anderson police for a series of fraudulent checks with Petitioner present. App. 320-321. After Debra admitted the crimes and blaming Stephens for making her commit them, Frances Moore had an outburst and stated in front of the officer she would kill that son of a bitch. Within three and ½ hours, Stephens was dead. ROA 321. Moore had a \$100,000 life insurance policy on her ex-son in law. A policy that she would eventually collect on with interest. ROA 506-511.

Between 2:45 and 2:50 PM, the Petitioner is seen driving a car from a spot on Baugh Road (where the victim is found within an hour) a few miles to a parking lot at Anderson Meats and Grocery with another male. ROA 235-245. She is then seen making calls from the phone. ROA 244, 267, 271. The male with her is not positively identified, although a picture of Duvall jumped out to Josh

Anderson from the grocery store who had been watching them for about 10 minutes. ROA 278. At around 3 PM, Moore and the male are seen leaving the area in the Toyota RAV 4. ROA 264-266. It is subsequently learned that three calls were made from the telephone to Moore's daughter's home where Stephens was living at that time. ROA 350, 367, 486.

Between 3:10 and 3:27, Paul Stephens is murdered and his car is set on fire. If Stephens answered the last phone call, it would have taken him 17 minutes to get to the scene of his death. At around 3:27, a fire is seen by a passerby Aaron Powers who calls 911. ROA 127-130, 137. The first worker comes to the scene at 3:30. ROA 139-143. At 3:40, the victim's body is discovered. ROA 141-42, 154-55.

Days later, Duvall tells Stansell about the fact he did the murder and details about the crime. He described shooting him outside of the car and setting fire. He additionally described that Moore was there and participated in the shooting (which was brought out in the cross-examination by the co-defendant's counsel). In 2006, Stansell reports to the police the discussions he had with Duvall before and after the murder.

ARGUMENT

- I. **Where a limiting instruction had been given that evidence from a statement that codefendant Duvall made to witness Stansell *after the crime* could only be used against Duvall and not Moore, where the codefendant used the "redacted" portion of the statement that addressed Petitioner Moore to impeach Stansell, not to implicate Moore and the State objected to the evidence, a new trial is not warranted where the State did not use the impeachment evidence to implicate Moore and the jury charge removed its consideration as to Moore.**

The second issue before the lower court and the only issue raised in this certiorari petition concerns evidence presented concerning a second statement made by Duvall to Stansell after the crime during cross-examination by the co-defendant concerning references made, but previously redacted by the State in its case under *Bruton v. U.S.*, 391 U.S. 123 (1968). The admission of this previously

redacted evidence was objected to by the State. ROA 440, Tr.p. 433. A limiting instruction had already been given by the trial judge expressly stating that “conversations after the date of the alleged crime, that evidence was admitted in the State’s case against Mr. Duvall only. So that would pertain to the statements made after the date of the alleged crime **against Duvall only, not against Moore.**” ROA 414, Tr.p. 407, ll. 8-15. Although the trial judge allowed counsel for Duvall to confront witness Stansell with redacted portions of the statement for impeachment purposes, a new trial is not required where the State did not use the redacted portions of the second Stansell statement to convict Frances Moore and did not refer to it as related to Moore in their closing, contrary to the insinuation by Petitioner in his petition before this Court.

The Court of Appeals did not expressly address this issue before the Court in its summary denial, other than its reliance upon SCACR Rule 220(b)(1). App.p. 2. In his argument before this Court, he boldly asserts that without Stansell’s testimony, that State’s case against Petitioner Moore “was nonexistent.” Petition, p. 5. As set forth below, this comment ignores the strong additional circumstantial evidence case presented against Petitioner concerning her identification near the scene, the express malice comments made to the police about killing her son-in-law, the motive with the odd insurance on her former son-in-law to her own benefit, as well as his expressed fear of her. The case was far from nonexistent.

In his petition before this Court, he blends portions of an abandoned challenge to evidence properly admitted as evidence of a conspiracy with the presently challenged statements concerning the actual crime which occurred at a different time and place, albeit with the same individuals. As properly parsed, the appeal is without merit.

For the reasons previously stated in the briefing in the Court of Appeals, Respondent submits that the Petition is without merit.

STANDARD OF REVIEW

Whether to grant or deny a mistrial motion is a matter within the trial court's sound discretion, and the court's decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law. *State v. Council*, 335 S.C. 1, 12-13, 515 S.E.2d 508, 514 (1999); *State v. White*, 371 S.C. 439, 443-44, 639 S.E.2d 160, 162 (Ct.App.2006). A mistrial should be declared only when absolutely necessary. *Council*, 335 S.C. at 13, 515 S.E.2d at 514. In order to receive a mistrial, a defendant must show error and resulting prejudice. *Id.* It is only in cases of abuse of discretion which result in prejudice that this court will intervene and grant a new trial. *White*, 371 S.C. at 444, 639 S.E.2d at 162. See, *State v. Culbreath*, 377 S.C. 326, 331, 659 S.E.2d 268, 271 (S.C.App.,2008) (state witness's references to defendant's prior drug dealings did not require a mistrial).

Why A New Trial Is Not Warranted.

The introduction of the unredacted portions of the statement in the objected cross-examination from co-defendant Duvall were not used by the State to prove the truth of the matters asserted by counsel for Duvall. To the contrary they were solely being used by co-defendant Duvall to impeach witness Stansell - not to prove that both Duvall and Stansell were involved. The Confrontation Clause does not address this issue. *Crawford*, and the Supreme Court cases applying *Crawford*, have involved out-of-court testimonial statements *admitted* at trial.² *Crawford* reiterated that the Confrontation Clause “does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.” 541 U.S. at 59-60 n. 9, 124 S.Ct. 1354, citing *Tennessee v. Street*, 471 U.S. 409, 414, 105 S.Ct. 2078, 85 L.Ed.2d 425 (1985). Nearly every circuit has accordingly held that testimonial statements *offered* for purposes other than their truth do not implicate the Confrontation Clause. *See*

² See *Giles v. California*, _ U.S. _, 128 S.Ct. 2678, 171 L.Ed.2d 488 (2008); *Davis v. Washington*, 547 U.S. 813, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006).

the cases cited in *Commonwealth v. Pelletier*, 71 Mass.App.Ct. 67, 879 N.E.2d 125, 129 n. 5 (2008).

In his petition, Moore complains that rather than seeking to introduce a limited statement that Stansell made to law enforcement and somehow not calling Stansell, under Bruton v. U.S., 391 U.S. 123 (1968), the State called Stansell about the actual conversation with Duvall at the hospital as a live witness. Petition, p. 5. This assertion by Petitioner is unsupported in law where the witness is available. He rhetorically takes the State to task to the live presentation, yet does not address how such evidence would have been presented, where the State sought to restrict the testimony and not going into statements about the Petitioner. ROA 46.

Moore cites no authority for the proposition that use of an out-of-court non-testimonial statement merely as the good faith factual basis for relevant cross examination of a witness at trial implicates the Confrontation Clause and authority to the contrary is found in *United States v. Miller*, 974 F.2d 953, 960 (8th Cir. 1992), where the Eighth Circuit held that use of a co-defendant's unredacted confession as the factual basis for cross-examining a defense witness at trial did not violate the Confrontation Clause as construed in *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968).

HOW THE ISSUE WAS RAISED BELOW

At the outset of the trial, counsel for Moore made a pre-trial motion *in limine* to suppress the out of court statements made by Duvall to J.W. Stansell. ROA 30, Tr.p. 23. The oral objection went initially to the subsequent statement given by Duvall to Stansell after the crime had been committed. ROA 31, Tr.p. 24. He asserted that the second admission by Duvall was hearsay and since it took place after the murder it could not be “in furtherance of the conspiracy” under State v. Anders, 332 S.C. 474, 503 S.E.2d 443 (1998). ROA 31-32, Tr. 24-25.

In response the state asserted that there were two statements that were given to J.W. Stansell.

The first statement was given on June 27, 1999 and it related to inducement statements to include Stansell in the conspiracy to kill. The second statement - at issue here - concerned admissions and description of the actual crime and Frances Moore's involvement in the shootings. ROA 32-33, Tr.p. 25-26.

After reviewing Anders and State v. Holmes, 342 S.C. 313, 536 S.E.2d 671 (2000), the state again urged its admission. The defense asserted that there were confrontation issues present. ROA 39, Tr.p. 32, ll. 10-19. Petitioner asserted that it was not admissible as a statement in furtherance of the conspiracy because there was no independent evidence of a conspiracy. ROA 39, Tr.p. 32.

The state asserted sufficient evidence did exist corroborating Moore's involvement including her driving away from the crime scene, making telephone calls near the scene, identified at the telephone booth when a call from that booth was made to the victim's home, and her threat to kill him Paul Stephens on the same day at the murder at the Anderson Police Department. ROA 40, Tr.p. 33.

After discussion, the State urged that the statement could be redacted and a cautionary instruction could be given. ROA 41-42, Tr.p. 34-35.

While Moore's motion was being discussed, Duvall's counsel noted that his defense would be to go into the statement in full. ROA 42, Tr.p. 35.

Judge Maddox then ruled the first part of the statements made by Stansell at the party would be admitted as made before the murder in furtherance of the conspiracy. ROA 43, Tr.p. 36, ll. 12-20.

The Challenged Evidence

After a series of discussions on the record, the decision was made to admit the evidence concerning a statement made by Duvall to Stansell after the death of Stephens when Stansell saw Duvall at a hospital, but to redact any reference to Frances Moore. In the proffered statement, it was indicated that this statement was not made in furtherance of the conspiracy, but rather was an

admission of guilt by Duvall. In the admission, Duvall had implicated Moore in the act of murder. The state stated it would advise the witness to steer clear of what Duvall said about Moore. ROA 42, Tr.p. 35, ll. 13-23. See also, ROA 45, 47, Tr.p. 38, ll. 4-18, p. 40, ll. 11-16.³ In the state's direct examination before the jury, J.W. Stansell testified about a second conversation that he had with Duvall shortly after the murder when he ran into him at the hospital. Stansell stated that he asked Duvall if he had killed Stephens which he affirmed. ROA 404, Tr.p. 397, ll. 14-19. He went on to respond that on the day of the murder he had called Debra's house and spoken with Paul and lured him out to Baugh Road. He stated that Duvall told him when Paul got there that he got out of the car and walked around a little trail and that Duvall shot him in the back of the head and then he caught the car on fire. ROA 405, Tr.p. 398, ll. 1-25. Stansell stated that this was similarly to the plan he had told him on the 27th that he would catch Paul, set the car on fire and spread drugs around.

When Stansell asked him why he didn't set Paul and the car on fire as planned, Duvall stated he wanted to, but Paul got out of the car. He confirmed that he took the gun and disposed of it at Ryobi, his place of business where he worked the furnace as they had discussed in June. ROA 406, Tr.p. 399, ll. 3-10. No reference was made to co-defendant Moore in this direct testimony about the second statement.

The Instruction Limiting Consideration of the Evidence Against Duvall, Not Moore.

After the testimony on direct, counsel for Moore asked for limiting instructions. The Court instructed as follows:

you've heard some testimony from Mr. Stansell, **and also you're going to hear more**, but regarding his testimony this morning regarding conversations after the date of the alleged crime, that evidence was admitted in the State's case against Mr. Duvall only.

³ The trial judge was weary of the potential that the codefendant (and declarant's) counsel would seek to use the full statement in its examination of the witness. ROA 45, 47, Tr.p. 38, ll. 13-18., p. 40, ll. 17-23.

So that would pertain to the statements made after the date of the alleged crime **against Duvall only, not against Moore.**

ROA 414, Tr.p. 407, ll. 8-15. This instruction was consistent with SCRE , Rule 105 concerning limited admissibility.

The Cross-Examination Of Stansell by Duvall's Counsel.

Following up on his prediction prior to trial, counsel Gamble, on behalf of co-defendant Duvall, made specific inquiry on the post-crime statement of his client to Stansell and asked : “ did he tell you that Frances Moore was with him?” At the point, the State objected to the question. ROA 440, Tr.p. 433, l. 15.

The State's Objection and Argument

Specifically, the State that it appeared that counsel Gamble was about to go into the portion of the statement that was redacted and the witness had been advised not to go into those matters prior to his testimony. ROA 440, Tr.p. 433, ll. 12-15. The state asserted that this was not like State v. Holmes and the State had not implicated Moore in the statement introduced in its case. The State asserted that the defense had abandoned this issue when it failed to move to sever at the beginning of the trial. ROA 441, Tr.p. 434. The State urged that it had not done anything to create a mistrial in this setting and opined that a curative instruction would apply.

The State contended that this case was tried as a joint trial as an efficient way to do justice and the defendant specifically did not move to sever the trials. She complained that the defense was now introducing something to create a mistrial.

Judge Maddox overruled the State's objection to the questions. He concluded that he would allow defense counsel on behalf of Duvall to question Stansell about the admission weighing the right to confrontation with the rules of evidence. He stated that he would take the motion for mistrial under advisement. ROA 443-44, Tr.p. 436-437. The defense for Moore clarified that she was moving for a

mistrial. ROA 444, Tr.p. 437, ll. 3-4. The trial judge then initially denied another curative instruction request. ROA 444, Tr.p. 437, ll. 5-9.

The Continued Cross-examination by Duvall.

At that time the cross-examination continued. Particularly, he stated:

Q. According to you , Garvin said he pulled a gun out and shot Paul in the back of the head. Is that what he said?

A. Yes sir.

Q. And that Frances shot Paul in the back after he was down?

A. Yes, sir.

Q. And that was at close range?

A. All he - - - I wasn't there . He told me he shot Paul in the back of the head.

Q. Standing right behind him?

A. Yes sir from what he said.

Q. Right.

A. And then that after he was down that Frances shot him in the back.

Q. Standing right over him?

A. Well, he just told me that after he fell down that Frances shot him in the back.

ROA 445, Tr.p. 438, ll. 9-25.

Moore's Motion for Mistrial

After the completion of the testimony by Stansell, counsel for Moore made another motion for mistrial based upon the testimony of Stansell about Duvall. ROA 472, Tr.p. 465, ll. 17-22. Moore contended that this was against the ruling that the Court made at the beginning of the trial with the

confession issue.⁴ In denying the mistrial motion, Judge Maddox stated that he would deny the motion based upon what came out - the two lines. ROA 472, Tr.p. 465, ll. 17-22.

Post-Trial Argument

After the jury verdict, post-trial motions were heard June 16, 2009. During the motion hearing counsel for Moore asserted that there was a violation of the confrontation rights under *Bruton v. U.S.*, supra. where a non-testifying co-defendant's statement cannot be used against a defendant. He stated that since the co-defendant did not take the stand, he was deprived of his right to cross-examination about the statement he made to Stansell where it could have been explored in great detail. He stated that first, it should have been denied altogether given the fact the state was pursuing a joint trial. Second, the fact his co-defendant did not testify limited his ability to confront the accuser by the hearsay. Finally, he contended that the trial was complicated by the fact that the co-defendant's counsel in cross-examination was able to emphasize and bring out points on testimony that was otherwise inadmissible and over which Moore had no control.

Counsel for Moore contended that although the judge gave limiting instructions concerning the evidence, the testimony was very prejudicial and deprived her of her right to confront witnesses as supported by the hearsay rule and the state and federal constitution. ROA 727, Tr.p. 720, ll. 16-22.

The State asserted the motion for new trial should be denied. The State asserted that the court gave a limiting instruction as to the evidence admitted through Mr. Stansell. First, the initial portion was admissible as in furtherance of the conspiracy and the statement after that was excluded. The State pointed out that when Mr. Gamble was cross-examining Stansell concerning the statement made after the murder, it was the State that objected, Mr. Pruitt made no objection to the evidence. ROA 729,

⁴ The defense for Moore did not object to these specific questions contemporaneously. ROA 445, Tr. 438.

Tr.p. 722, ll. 1-7.

The trial court orally denied the motion for mistrial. ROA 730, Tr.p. 723, ll. 13-14.

ANALYSIS

The Confrontation Clause of the Sixth Amendment, which was extended to the states by the Fourteenth Amendment, guarantees the right of a criminal defendant to confront witnesses against him, and this includes the right to cross-examine witnesses. *Richardson v. Marsh*, 481 U.S. 200, 206, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987).

In *Bruton v. U.S.*, the Supreme Court held that, in a joint trial, admission of a non-testifying codefendant's statement that expressly inculcates the defendant violates the defendant's rights under the Confrontation Clause, as the use of only a limiting instruction is insufficient to remove any prejudice to the defendant. 391 U.S. at 136-37, 88 S.Ct. 1620. In *Richardson*, the Supreme Court remarked that the rule announced in *Bruton* is a "narrow" one that applies only when the statement implicates the defendant "on its face"; the rule does not apply where the statement becomes incriminating only when linked to other evidence introduced at trial, such as the defendant's own testimony. *Richardson*, 481 U.S. at 207-08, 107 S.Ct. 1702. The Supreme Court also noted *Bruton* can be complied with by the use of redaction:

Even more significantly, evidence requiring linkage differs from evidence incriminating on its face in the practical effects which application of the *Bruton* exception would produce. If limited to facially incriminating confessions, *Bruton* can be complied with by redaction—a possibility suggested in that opinion itself. *Id.*, at 134, n. 10, 88 S.Ct., at 1626, n. 10. If extended to confessions incriminating by connection, not only is that not possible, but it is not even possible to predict the admissibility of a confession in advance of trial.

Id. at 208-09, 107 S.Ct. 1702. See also, *Gray v. Maryland*, 523 U.S. 185, 118 S.Ct. 1151, 140 L.Ed.2d 294 (1998) (a statement that "substituted blanks and the word 'delete' for the petitioner's proper name[] falls within the class of statements to which *Bruton's* protections apply.").

Violations of the Confrontation Clause are subject to a harmless error analysis. *State v. Murphy*, 270 S.C. 642, 644, 244 S.E.2d 36, 36-37 (1978) (observing where a wealth of evidence exists against the appellant, it eliminates any error in the admission of a codefendant's statement). "A [C]onfrontation [C]ause error is harmless if the evidence is overwhelming and the violation so insignificant by comparison that we are persuaded, beyond a reasonable doubt, that the violation did not affect the verdict." *State v. Vincent*, 131 Wash.App. 147, 120 P.3d 120, 124 (2005). "Considerations include the importance of the witness's testimony, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and the overall strength of the prosecution's case." *Id. See, State v. Holder*, 382 S.C. 278, 283-285, 676 S.E.2d 690, 693 - 694 (S.C.,2009).

REASONS WHY CERTIORARI SHOULD BE DENIED

Here, there are certain salient points that remove this from *Bruton*'s protections. First, the State did not introduce the information about Moore from the post-crime admissions that Duvall made to Stansell. The State instructed the witness to not testify about any information concerning Moore. Second, the State objected to the unredacted testimony related to Moore in an attempt to insure that there was no *Bruton* issue. Third, the existing limiting instruction precluded the jury's consideration of the post-crime comments against Moore.⁵ Underlying the State's frustration in their attempt to keep this trial clean of potential *Bruton* error was the fact that no motion to sever the trials was made prior to or during the trial. ROA 442-44, Tr.p. 435-437.

The Petitioner seeks to have the Court use this case as a vehicle to again discuss the problems

⁵ The Petitioner points out that Judge Maddox did not issue a second cautionary instruction after cross-examination. While the judge may have been perplexed as to how to re-address the issue in light of counsel Gamble's stated intent and brief questioning, it did not removed the fact that the jury was already guided by the instructions given.

with joint trials, citing *State v. Singleton*, 303 S.C. 313, 400 S.E.2d 487 (1991). He implies that the impact of *Crawford v. Washington* makes joint trials more suspect. The perils of the joint trial could have been resolved in the setting if the trial judge had sustained the objection. In hindsight, the trial court could have alternately addressed the potential Bruton problem with a redaction including “another person” replacement rather than allowing the counsel to supplant the statement with its original information concerning Moore. He could have sought an understanding of the specific purpose of cross-examination by counsel gamble and then addressed the particular situation with a limiting instruction. However, the fact that hindsight can be used does not suggest that Moore is entitled to a new trial.

The Impact of Moore’s Intentional Decision to Not Seek a Severance.

Although invited error was not specifically argued at trial, Respondent noted in its Initial Brief of Respondent that it is plain that the severance remedy for the potential *Bruton* error was not sought by Moore at the time of the trial. The State asserted at trial that the defense had abandoned this issue when it failed to move to sever at the beginning of the trial. ROA 441, Tr.p. 434. It was evident to Moore that the redaction of Stansell’s statement of the reference to the Petitioner concerning the post-crime hospital comments would be made and that counsel Gamble for Duvall was lying in wait to go line by line when Stansell testified. Moore’s failure to seek severance at the outset of the trial should act as a waiver of the right to a new trial based upon this issue. ⁶ See Tr.p. 33-40. See *State v.*

⁶ Criminal defendants who are jointly tried are not entitled to separate trials as a matter of right. *State v. Dennis*, 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999). A defendant who alleges he was improperly tried jointly must show prejudice before this Court will reverse his conviction. *Id.* The general rule allowing joint trials applies with equal force when a defendant's severance motion is based upon the likelihood he and a co-defendant will present mutually antagonistic defenses, i.e., accuse one another of committing the crime. *Id.* A severance should be granted only when there is a serious **risk that a joint trial would compromise a specific trial right of a co-defendant** or prevent the jury from making a reliable judgment about a co-defendant's guilt. *Id.* (Emphasis supplied). A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial. *State v. Holland*, 261 S.C. 488, 494, 201 S.E.2d 118, 121(1973). See, *Hughes v. State*, 346 S.C. 554, 558-559, 552 S.E.2d

Culbreath, 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008) (defense counsel opened the door to bad act evidence by questioning concerning drug dealing where state did not introduce the evidence and thereby invited error doctrine applied). In his petition, he cites to *State v. Latham* , 275 S.C. 550, 273 S.E.2d 772 (1981) as asserting that the State was seeking to profit on appeal by its mistake due to the silence an appellant. While Petitioner sought to exclude its admission at the time of the trial, he did not present this basis as a claim for severance. The difference is that again, the State did not introduce the post-crime Stansell evidence as it related to Moore, in fact objecting to it. The State is not seeking to “profit” on appeal, only to place the responsibility for the admission of the evidence upon the other who actually introduced it and Petitioner who may have avoided the matter by seeking a severance.

The Closing Argument Use of the Stansell Evidence by the Prosecution Did Not Include The Evidence from the Duvall Cross-Examination.

Simply put the State did not use the post-crime Stansell-Duvall evidence as it related to Moore in its closing argument. In his brief, Petitioner seeks to again show that any error in the admission of the evidence could not be harmless because the co-conspirator evidence was used in the prosecution argument. *Petition for Writ of Certiorari*, p. 14-16, *Initial Brief of Appellant*, p. 10-12. However, the closing argument comments by the prosecutor that Moore points out refers not to the hospital statements made after the crime to Stansell by Duvall, which he is presently challenging in this certiorari proceeding, but the evidence of Duvall’s earlier pre-crime statement to Stansell at the party which was admissible against Moore as evidence of a co-conspirator’s statements in furtherance of a conspiracy. A review of the particular parsed comments set out on page 15 of the Petition and page 11 of the *Initial Brief of Appellant* reveal that they are only directed toward the June 27, 1999 conversation

315, 317 (S.C.,2001).

between Duvall and Stansell seeking Stansell to join the planned conspiracy to murder Stephens and the plan. ROA 667, 677, 680, 681, 682, 683, 684, 685, Tr. 660, ll. 22-25, p. 670, ll. 20-23, p. 673, ll. 19-20, p. 674, ll. 2-5, p. 675, ll. 17-19, p. 676, ll. 13-16, p. 677, ll. 20-24,⁷ p. 678, ll. 18-19. Assuming the admission of the pre-crime inducement evidence was proper, the jury's consideration of the evidence and prosecutor's comments about it were equally proper.

The Alleged Error Can Be Harmless

Assuming error, the *Bruton* error can be harmless. In addition to the limiting instruction, the evidence against Moore was overwhelming. There was express malice and intent presented to the officers on the day of the murder - "kill the son of a bitch." The was motive - getting her daughter involved in crimes and having a \$100,000 policy. There was opportunity shown by her presence near the crime scene around the time of the crime. Finally, there was the feared relationship the victim had with Moore - a relationship that caused Stephens to predict his death and the manner it would happen.

The trial judge did not abuse his discretion in admitting evidence of a conversation by Garvin Duvall prior to the murder that he was intending to kill Paul Stephens, that Frances Moore was to pay him, that he planned to dispose of the weapon and requested Stansell to do the killing. As evidence in furtherance of the conspiracy, its admission did not violate the right to confrontation.

In his earlier initial argument in the Court of Appeals, the Petitioner contended her 6th Amendment Confrontation Right was violated in the admission of testimony from J.W. Stansell concerning a conversation he had with co-defendant Garvin Duvall on June 27, 1999, three days before the murder of Paul Stephens. In admitting the portion of the testimony which admitted a plan to kill Stephens with an inducement for pay from Petitioner Frances Moore, the means to kill by showing the weapon and a specific request from Duvall to Stansell to join the conspiracy and kill Stephens, the trial

⁷ This particular comment in the Brief was a summary of the testimony of the pathologist concerning the location and timing of the second shot. ROA 530-31, Tr.p. 523-524.

court found it was admissible under S.C. Rules of Evidence, Rule 801(d)(2) as a non-hearsay statement by a co-conspirator in furtherance of a conspiracy. Since it was properly introduced under this exception as non-hearsay, it was not a violation of the Confrontation Clause as recognized in Crawford v. Washington, 541 U.S. 36 (2004) and its progeny.

In its summary rejection of the issue, the Court of Appeals relied upon the progeny of Crawford from this Court in State v. Davis, 371 S.C. 170, 178, 638 S.E.2d 57, 61 (2006) with the parenthetical “holding witness testimony relaying a co-conspirator’s account implicating the defendant did not violate the defendant’s confrontation rights because the account “clearly was made outside of an investigatory or judicial context” and therefore was not testimonial.” App. 2.

The record supports the conclusion that the evidence was not admitted in violation of the Confrontation Clause and that it was admissible as non-hearsay evidence as evidence in furtherance of the conspiracy.

A. The Direct Testimony of Stansell Was Properly Admitted.

During the direct testimony of J.W. Stansell, an acquaintance of the co-defendant Garvin Duvall, he described a conversation he had with Duvall. The conversation took place prior to the murder on June 27, 1999 when they were together at a party for the child of a friend where Stansell also did some magic tricks for a family friend. According to Stansell, during the party, Duvall came up to him and asked him to go for a ride and to talk. ROA 396, Tr. 389. Stansell agreed and they left in his truck and went to a convenience store and bought some sodas. Garvin told him that he was in trouble and needed to talk to him about something. At that point the following occurred:

And he proceeded to tell me that Paul - - he called Paul Anderson County’s biggest rat, and said that Paul and he and some other people had been involved in some different criminal activity and that Paul was about to get arrested and was going to turn on them, **and that Frances Moore was one of the ones that was involved, and that she along with some other people wanted Paul dead. And Garvin went on to tell me that she was going to pay him \$2,000 to kill Paul.**

- Q. Okay. What, if anything else, did he say?
- A. He had a - - back behind his seat because we - - after we - - you know, we left the convenience store and rode back. And we came back to the park but we didn't pull down, you know, were up at the shed. We just kind of parked up near the top. **And he showed me a bag that had a gun in it that had been provided for him to do this murder**, and he wanted me to take it out and look at it. And I told him I could see it real good where I was at and th at, you know, I didn't want to touch it, and he kind of - -
- Q. Could you tell what kind of gun it was?
- A. You know, I'm no gun expert but I know that it looked like an automatic to me, kind of like either a 9 millimeter or a 380, but, you know, I didn't take it out and look real close up at it.
- Q. Okay. And how were you able to know that it was maybe a 380 or a 9 millimeter?
- A. Well, I had seen a lot of 9 millimeters on police shows, and I owned a 380 at the time. So to me they looked, you know, similar.
- Q. And what, if anything, was Garvin saying to you about this gun?
- A. Well, he said that, you know, **it had been provided for him to do the murder and that after the murder that he was going to dispose of it at the place where he worked at, which I knew that he worked in the die casting section at Ryobi**. I'm not sure if they still called it Piedmont Die Casting or not but it was a die casting company associated with Ryobi where he worked, and he was the man who attended to the furnace, or that's what he had told, you know, before.
- And years before I worked at Imperil Die Cast many years before so I was very familiar with, you know, what that job entailed, and I knew that whoever fed the furnace could put anything they wanted to in the furnace. And he said he was going to put it in the furnace and get rid of it.
- Q. **He was going to put the gun in the furnace?**
- A. **Yes, ma'am.**
- Q. **After it was used?**
- A. **After the murder.**
- Q. What, if anything, did he say after that, after you were talking about the gun?

A. Well, you know, I sit there kind of dumbfounded, and then it went from bad to worse because he looked at me and just out of the clear and said *do you want to do it. And I said no, you know. And, you know, I told him, I said look, I'm not a murderer.*

And so then, you know, he just told me, **he said, it's got to be done.** And I looked at him and I said, I thought you and Paul were best friends. And he said, we are but business is business.

And I said, but his son is at that party. And I said, you are the godfather of that child. I said, how will you ever be able to look at that kid, you know, and do that.

And it went on for a little while, and then he just - - he starts in, oh, you know, I'm just messing with you. And, you know, Paul does need to be shut up but I was just messing with you, just joking. I'm not going to do it.

Q. Now, I'm going to back up a little bit. Did he say anything else about - - or what, if anything else, **did he say about how the killing would take place?**

A. **Well, he told me that he had prepared a place. At that time he did not tell me where. But he said that there was - - right near the road there's a little wooded area and he said if, you know, whoever was going to do it, and he was implying if I did it, I could stand there behind the bushes and he would get Paul out there, and when Paul drove up I could just step out, in his words, pop him. And then he said that he was going to set the car on fire and was going to make it look like a drug deal gone bad, that he was going to leave some drugs at the scene.**

Q. Now, then you said that Garvin asked you if you wanted to do it?

A. Yes, ma'am.

Q. Why do you think he asked you that?

A. Well, to be perfectly honest, you know, I can't tell you exactly why.

ROA 397-400, Tr. p. 390, l. 6 - p. 393, l. 14. Stansell testified that they returned to the party and he took his family and left. ROA 400-01, Tr. 393-94. He stated after the party on Sunday, he learned Wednesday afternoon that Paul had been murdered. ROA 403-04, Tr. 396-97.

ANALYSIS

The Confrontation Clause gives an accused the right "to be confronted with the witnesses

against him.” U.S. Const. amend. VI. However, because the Confrontation Clause is concerned with testimonial statements only, once it is determined that a statement is nontestimonial, only the rules of evidence may bar its admission. Statements made in furtherance of a conspiracy are inherently non-testimonial. *Crawford v. Washington*, 541 U.S. 36, 56, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004); *Whorton v. Bockting*, 549 U.S. 406, 412, 127 S.Ct. 1173, 167 L.Ed.2d 1 (2007) (“[T]he Confrontation Clause has no application to [non-testimonial out-of-court statements]”).

The Conspiracy Statements Were Not Testimonial and Were Admissible.

Under any formulation of the rule, Duvall’s initial incriminating statements made to Stansell were not “testimonial.” In its reliance upon State v. Davis, the Court of Appeals agreed. Indeed, it is clear enough that DuVall had no idea that the incriminating statements he made to Stansell would ultimately be used against him at trial. In this sense, we cannot say that DuVall, in making the statements, “would reasonably expect [the statements] to be used prosecutorially.” *Id.* Nor can we say that an objective witness, in these circumstances, would “reasonably ... believe that the statement would be available for use at a later trial.” *Id.* The critical distinction between *Bruton* and this case is the circumstances under which the out-of-court statement was made. Whereas in *Bruton* the incriminating statement was the product of a formal interrogation and therefore testimonial, the incriminating statements made by Duvall here were made unsuccessfully in furtherance of the conspiracy, and not in anticipation by him of future use of the statements at trial. Under our present understanding of the confrontation right, governed by *Crawford*, the introduction of Duvall’s out of court statements did not violate Moore’s confrontation right. Indeed, the Supreme Court has indicated that statements in furtherance of a conspiracy are non-testimonial for purposes of the Confrontation Clause, and are therefore not covered by its protections. *Crawford*, 541 U.S. at 56, 124 S.Ct. 1354 (noting that most hearsay exceptions “covered statements that by their nature were not testimonial—for example, business

records or statements in furtherance of a conspiracy”); *id.* at 68, 124 S.Ct. 1354 (concluding that, unlike testimonial evidence, “nontestimonial hearsay ... [may be] exempted ... from Confrontation Clause scrutiny altogether.”).

The Petitioner had contended that the statements were testimonial because Stansell subsequently gave a statement to law enforcement concerning the earlier statement that Duvall had given him. *Initial Brief of Appellant*, p. 6. The Petitioner misread the Crawford test because the testimony introduced does not concern the 2006 statement made to law enforcement, but the 1999 conversation between Duvall and Stansell. The subsequent reporting is not relevant to the inquiry as to whether the initial statement was testimonial under *Crawford* where the witness testifies in court. To accept the Petitioner’s approach would underline this threshold test - unless of course - it is related to the fact of the report to law enforcement. Stated another way, if Investigator Graham testified about the statement he received during the investigation from Stansell, the testimonial issue would be different. However, this is not what happened - it was Stansell testifying what Duvall told him.

Because the trial court admitted these pre-murder statements under Rule 801(c), (d)(2)(E), as they were offered not to prove the truth of the matters asserted but to show the statements were made “in furtherance of the conspiracy,” there was no violation of the Confrontation Clause. *See United States v. Ayala*, 601 F.3d 256, 272 (4th Cir. 2010); *United States v. Sullivan*, 466 F.3d 248, 258 (4th Cir. 2006).⁸

⁸ ***The pre-murder statements were admissible as evidence in furtherance of a conspiracy.***

Although not raised in the Petitioner’s petition or briefs on appeal, which appear to concede the adequacy of the independent evidence of a conspiracy and the admission of evidence under the non-hearsay in furtherance of conspiracy rule, Respondent submits that the admission was proper under *State v. Anders* and the more recent case of *State v. Sims*, 387 S.C. 557, 694 S.E.2d 9 (2010). Duvall’s June 1999 statement to Stansell is, by definition, *not* hearsay, as it is “a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.” Rule 801(d)(2)(E), SCRE. There are basically two prongs to qualify the statement under Rule

801(d)(2)(E). This statement soundly meets both requirements.

First, the record must first show the existence of a conspiracy independent of the statement offered. *State v. Gilchrist*, 342 S.C. 369, 372, 536 S.E.2d 868, 869 (2000). Here, independent evidence existed. First, Frances Moore got angry declared the morning of the murder that “I’m going to kill that Son of a Bitch” after her daughter confessed to fraudulent checks and implicated her ex-husband - the victim - as making her do the crime. ROA 321, Tr.p. 314, ll. 8-16. Moore was identified by Josh Anderson as being at Anderson Meats at a telephone near the scene of the murder near the time of the murders. ROA 268-272, Tr.p. 261-265. A photograph of Duvall “popped out” or “jumped out” to him during the procedure, but he could not positively identify him as the other person at the telephone. ROA 276-77, Tr.p. 269-270. Anderson only saw the lady on the telephone. ROA 281, Tr.p. 274. The Anderson Meats telephone was used at that time to call the home three times where the victim lived during the same 2:54- 3 PM period (14:52, 14, 53, 14:57) Moore with a male was at the location. ROA 350, Tr.p. 343. Also ROA, 486-87, Tr.p. 479-480. Importantly, a white Toyota RAV4 was seen by Josh Addis prior to 2:45-2:50 on Baugh Road where the crime happened. ROA 234-36, Tr.p. 227-229. The RAV 4 followed him to Anderson Meats with a female driver and male passenger who got out by the telephone booth before 2:54. ROA 237-241, Tr.p. 230-234. The woman and man were seen arguing and upset. ROA 244-45, Tr.p. 237-238. Between 3:10 and 3:27, under the state theory at trial, Paul Stephens is murdered by 2 gunshots and his car is burned off Baugh Road. Josh Anderson sees Moore in Toyota around 3 PM with white male. Seventeen minutes after the victim could arrive at Baugh Road, 911 is called concerning the car fire at around 3:16. ROA 128-132, 143, Tr. 121-125, 136. Car fire was determined to be between 10 minutes and could have been burning 45 minutes. ROA 189-193, Tr.p. 182-186.

In addition, the victim had expressed that he was fearful of Frances Moore and stated on many occasions near the time of the killing to three people “if I was ever found shot and his car caught fire to have his mother in law investigated.” ROA 302, Tr.p. 295, ll. 10-25. (Kenny Erwin) Also, ROA 307, Tr. 300 (Nellie Erwin); ROA 313, Tr. p. 306, ll. 9-14 (Rita Woods). Also, Frances Moore had a motive to kill (and a potential fund to pay to have it done) in addition to being upset that Stephens had gotten her daughter to commit a crime - she had a \$100,000 life insurance policy on the victim through Liberty Life Insurance that she could and eventually did recover as a result of the death, *with interest*. ROA 505-511, Tr.p. 498-504.

Second, the record must show the statement was made “in furtherance of” or otherwise advanced the conspiracy. *Gilchrist, supra., Sims*. During the June 27 conversation, after describing the intent to kill Stephens, the manner that he would kill him by luring him and then shooting him, in return for \$2000, Duvall specifically solicited to have Stansell commit the crime with him:

Well, you know, I sit there kind of dumbfounded, and then it went from bad to worse because he looked at me and just out of the clear and said *do you want to do it. And I said no, you know. And, you know, I told him, I said look, I’m not a murderer.* And so then, you know, he just told me, **he said, it’s got to be done** ROA 399, Tr.p. 392, ll. 5-9.

Well, he told me that he had prepared a place. At that time he did not tell me where. But he said that there was - - right near the road there’s a little wooded

area and he said if, you know, **whoever was going to do it, and he was implying if I did it**, I could stand there behind the bushes and he would get Paul out there, and when Paul drove up I could just step out, in his words, pop him. And then he said that he was going to set the car on fire and was going to make it look like a drug deal gone bad, that he was going to leave some drugs at the scene.

ROA 399-400, Tr.p. 392, l. 24- p. 393, l. 8. Also, Tr.p. 393, l. 9-12.

This solicitation testimony reveals the statements were “in furtherance of the conspiracy.” The Court in *Sims* held that the “in furtherance of” prong, our law provides that “a statement by a co-conspirator must advance the conspiracy to be admissible under Rule 801(d)(2)(E).” citing *State v. Gilchrist*, 342 S.C. 369, 372, 536 S.E.2d 868, 869 (2000). “While mere conversation or narrative declarations are not admissible under this rule, statements made to induce enlistment, further participation, prompt further action, allay fears, or keep coconspirators abreast of an ongoing conspiracy's activities are admissible.” *Id.* at 372, 536 S.E.2d at 869 (quoting *United States v. Arias-Villanueva*, 998 F.2d 1491, 1502 (9th Cir. 1993)).

The statement by Duvall was to specifically induce enlistment and participation by Stansell in the murder of Stephens. It differs from *Anders* and *Sims* in that respect. In *State v. Anders*, a witness testified that she overheard a coconspirator of Anders say that Anders “was going to pay him big for blowing up the building.” 331 S.C. 474, 476, 503 S.E.2d 443, 444 (1998). The Court held that “even if made **during** the conspiracy, the statement in no way **advanced** the conspiracy.” *Id.* at 476-77, 503 S.E.2d at 444 (emphasis in original). In *Anders*, the Court found it mirrored that in other jurisdictions. See *United States v. Pallais*, 921 F.2d 684, 688 (7th Cir. 1990) (“Mere chitchat, casual admissions of culpability, and other noise and static in the information stream are not admissible.”); *United States v. Posner*, 764 F.2d 1535, 1538 (11th Cir. 1985) (stating a letter that “spilled the beans” regarding a tax scheme “could hardly be considered to have advanced any object of the conspiracy”). Caselaw subsequent to *Anders* remains in accord. See *United States v. Pratt*, 239 F.3d 640, 643 (4th Cir. 2001) (“Idle conversation that touches on, but does not further, the purposes of the conspiracy does not constitute a statement in furtherance of a conspiracy under Rule 801(d)(2)(E).”).

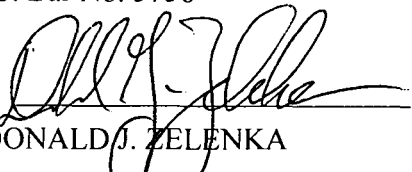
The difference between such statements and the statement at issue here is evident in the holdings of *State v. Anders*, 331 S.C. 474, 503 S.E.2d 443 (1998) and *State v. Anderson*, 357 S.C. 514, 593 S.E.2d 820 (Ct.App. 2004). In *Anders*, this Court found that a simple admission of guilt, not made in connection with any a conspiracy - - either to commit the crime or to hide the evidence, as is the case here - - is not admissible under the co-conspirator’s statement exception as it is not specifically tied to the completion or furtherance of the conspiracy. The facts in that case showed that one co-conspirator admitted his participation in a conspiracy to destroy a building and his acts in completion of the goal. The Court held the statement was not made in furtherance of the conspiracy and was not admissible as a co-conspirator’s statement under the rule. *Anders*, 331 S.C. at 476-77, 503 S.E.2d at 444. In *Anderson*, however, the witness testified that a co-conspirator told him “they had a lick or something like that.” 357 S.C. at 517, 593 S.E.2d at 821. That statement actually induced the witness to join the conspiracy to rob the victim, thus was admissible under the rule. *Id.* Contrary to Petitioner’s assertion, pursuant to Rule 801(d)(2)(E), SCRE, the statement, by definition, is not hearsay.

Therefore, the initial statement on June 27, 2010, by definition, was not hearsay and was

CONCLUSION

For all the foregoing reasons, the judgement of convictions must be affirmed.

Respectfully submitted,
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Senior Assistant Deputy Attorney General
S. C. Bar No. 5758

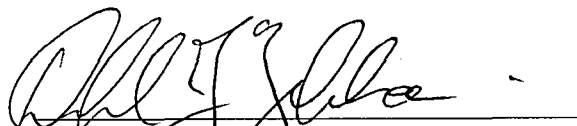
BY: 
DONALD J. ZELENKA
ATTORNEYS FOR RESPONDENT

August 13, 2012

properly admitted. Moreover, in this case, there are two layers to the statement. The first is the statement made by Duvall is admissible as non-hearsay as co-conspirator's statement for the reasons listed above. The trial court did not err in its admission.

CERTIFICATE OF SERVICE

I, **Donald J. Zelenka**, hereby certify that I have served the *Return to the Petition for Writ of Certiorari* in the foregoing action by depositing copies in the United States mail, postage prepaid, to John Delgado, Esquire, Bluestein, Nichols, Thompson & Delgado, LLC, P. O. Box 7965, Columbia, SC 29202 this 13th day of August, 2012.



DONALD J. ZELENKA
Senior Assistant Deputy Attorney General



ALAN WILSON
ATTORNEY GENERAL

August 13, 2012

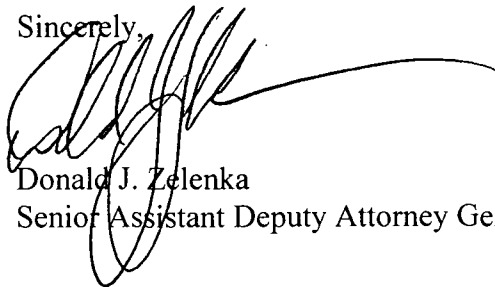
Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

Re: The State v. Frances Moore
Appellate Case No. 2012-210506

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above-referenced case for filing. By copy of this letter, I am serving opposing counsel with same.

Sincerely,



Donald J. Zelenka
Senior Assistant Deputy Attorney General

RECEIVED

AUG 16 2012

S.C. SUPREME COURT

pm 8-13-12

DJZ/lbb
Enclosures

cc: John D. Delgado, Esquire
S.C. Court of Appeals
Christina T. Adams, Solicitor
Sandi Wofford, Victims Assistance