

## Hopkins, Debbie

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**From:** Jeff Bloom <Jeff@jpbloomlaw.com>  
**Sent:** Thursday, April 20, 2017 8:59 AM  
**To:** Hopkins, Debbie  
**Cc:** Goodstein, Diane S. Law Clerk (George B. Smythe); Hubbard, Rick; Bill S. McGuire; cmulligangreen@sccid.sc.gov  
**Subject:** Attn Debbie Hopkins, SC Ct. Admin. - re: State v. Barnes #2005-GS-19-00457 and 00273  
**Attachments:** Order 1 Status Conference\_1-4-17.pdf; Order 2 Status Conf\_2-16-17.pdf; Order 3 Status Conf\_3-27-17.pdf

Debbie --

Attached are the 3 Status Conference Orders issued by Judge Goodstein in this case, as you requested, to serve as status reports in this case since January 1, 2017.

It is my understanding that Judge Goodstein's Office will send a status letter to you every 60-days, with the next due date being on or about June 1, 2017 --- and then every 60-days thereafter. This is per the original appointment order from the SC Supreme Court designating Judge Goodstein with jurisdiction of this case, and assigning her Office responsibility for submitting the 60-day status conference reports.

Please feel free to contact me with any questions.

thanks,  
Jeff

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RECEIVED

APR 20 2017

S.C. SUPREME COURT

EDGEFIELD COUNTY  
CLERK OF COURT  
CHARLES L. DEEL

STATE OF SOUTH CAROLINA )

2017 JAN 18 AM 10:49 )  
COUNTY OF EDGEFIELD )

STATE OF SOUTH CAROLINA )

VS. )

STEVEN L. BARNES )  
Defendant. )

IN THE COURT OF GENERAL SESSIONS  
FOR THE ELEVENTH JUDICIAL CIRCUIT  
Ind.Nos. 2005-GS-19-00457 and 00273

ORDER: STATUS CONFERENCE

This pending capital case came before me for a Status Conference. This Court held a telephone conference call on December 19, 2016. with the following: Solicitor-elect Samuel R. Hubbard III for the State; and William McGuire, Chief Attorney, Capital Trial Division of the South Caroling Commission on Indigent Defense, and attorney Jeffrey Bloom, both as counsel for the defendant. This Court made findings of unique and unusual circumstances which have delayed the scheduling of this case for trial, as set for below and herein. This Court Orders that another Status Conference will be held 30 (thirty) days after Solicitor-elect Hubbard is sworn in on January 11, 2017, as the Solicitor for the Eleventh Judicial Circuit, so that such Status Conference will be set for the week of February 13-17, 2017. This Court makes the following findings of fact and conclusions of law in this matter.

First, this case was reversed by the S.C. Supreme Court and remanded for a new trial on January 15, 2014. *State v. Barnes*, 407 S.C. 27, 753 S.E.2d 545 (2014)(*Barnes* /)(denial of right of self-representation is a structural error requiring reversal). On June 9, 2014, the undersigned Circuit Court Judge was assigned jurisdiction of this case. On September 11, 2014, this Court scheduled a hearing to set forth the scheduling of this case, and to determine whether Mr. Barnes intended to assert his Sixth Amendment right to represent himself, or if he intended to assert the same constitutional right to appointed counsel. At said hearing, this Court appointed Mr. McGuire and Mr. Bloom. On September

17. 2014, the State, represented then by Solicitor Donald Myers, appealed this Court's decision. Thus, this Court as a matter of law, was required to relinquish jurisdiction of this case to the S.C. Supreme Court on said appeal, and all trial matters were automatically stayed. On April 8, 2015, the S.C. Supreme Court heard oral argument in the matter.

On July 1, 2015, the South Carolina Supreme Court affirmed this Court's September 11, 2014 ruling that the defendant had a right to appointed counsel at any retrial. The Court remanded the case to the undersigned Circuit Court Judge. *State v. Barnes*, 413 S.C. 1, 774 S.E.2d 454 (2015)(*Barnes II*)(Defendant entitled to his Sixth Amendment right to appointment of counsel at retrial even where at first trial he asserted his right to self-representation, because a structural error voids the first trial). On July 14, 2015, the State filed a petition for rehearing. On August 6, 2015, the Court denied the State's petition for rehearing. On August 10, 2015, the Clerk of the Supreme Court issued the Remittitur, returning jurisdiction of the case to this Court in the Edgefield County Court of General Sessions. On August 28, 2015, the S.C. Supreme Court issued a special Order of Protection in the Roof case. That Order protected Mr. McGuire from being required to appear in the Courts of General Sessions regarding his other cases. Subsequently, this Court held several status conferences intending to schedule this matter for trial, but was awaiting the resolution of the Roof trial in accordance with the Supreme Court Order. On December 16, 2016, the S.C. Supreme Court rescinded the Roof Order of Protection as applied to Barnes' case.

Second, as to the State this Court finds the following. Mr. Hubbard will take the oath of Office as the newly elected Solicitor of the Eleventh Judicial Circuit on January 11, 2017. As the newly elected Solicitor, responsibility for this as a capital case will be his. to

either reaffirm the State's intent to seek the death penalty, or to reevaluate such decision and proceed accordingly. Mr. Hubbard informs this Court that while this case was pending in the Solicitor's Office prior to its original trial in 2010, Mr. Hubbard had no involvement in the case whatsoever as it was not one of his assigned cases or duties.<sup>1</sup> Thus, Mr. Hubbard has never met or talked with any of the witnesses, has not met with the Sheriff's Office or any law enforcement agency involved with the investigation of this case, has never met the victim's family, and has, quite plainly, never even looked at this case file.

Thus, this Court finds and concludes as a matter of law, that it would be completely unfair to the State, not to mention, unrealistic, to expect Solicitor Hubbard to be prepared to try this capital case in January or February 2017.

Third, as to defense counsel William McGuire this Court finds the following. This Court has been informed for some time that Mr. McGuire --- in his duties as the Chief Attorney of the Capital Trial Division --- is also appointed in the capital case of State v. Dylan Roof, pending in state court in Charleston County (Ind. No. 2015-GS-10-4115, et.al.).<sup>2</sup> On August 28, 2015, the S.C. Supreme Court, by and through then Chief Justice Jean Toal, issued an Order of Protection for attorney McGuire in the Roof case. The Order of Protection barred any other Circuit Court Judge from setting a trial in Mr. McGuire's other pending capital cases, until 90-days after the Roof case was concluded. Thus, this Court was prohibited from setting this case for trial until 90-days after the state charges against Roof are resolved. While the Roof state trial was set for trial in January 2017,

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<sup>1</sup> Mr. Hubbard previously served in the Eleventh Circuit Solicitor's Office as a senior prosecuting attorney.

<sup>2</sup> The Roof case involves the homicide of 9 parishioners at the Mother Emmanuel Church in Charleston, has garnered national attention, and Roof is facing capital charges in both federal and state court.

Roof's current federal capital trial is ongoing at the time of this Status Conference and Order in this case. Therefore, it is still unclear when the state charges against Roof will be resolved.

On December 16, 2016, Chief Justice Costa Pleicones rescinded the Order of Protection for Mr. McGuire as applied to Barnes' case. Thus, this Court now has the opportunity to begin scheduling matters in Barnes' case. Since Mr. McGuire has reasonably relied upon the previous Roof Order of Protection, he informs this Court that he requires a reasonable amount of time to renew preparations of Barnes' case for trial.

Thus, this Court finds and concludes as a matter of law, that it would likely constitute ineffective assistance of counsel to force Mr. McGuire to trial in this capital case by January or February 2017 when he has, in effect, relied on another Order of the S.C. Supreme Court for protection in Barnes' case.<sup>3</sup>

Fourth, as to defense counsel Bloom this Court finds the following. In a meeting with the S.C. Office of Indigent Defense, General Counsel Hugh Ryan, this Court is informed that attorney Bloom was asked to temporarily reduce or "put on hold" defense spending on mitigation investigation, experts, and efforts, in order to potentially save expenditures in the event that such mitigation was not needed. This was apparently based upon the concern that valuable monetary resources would not have to be incurred and expended if the case could not be tried at this time due to the Roof Order of Protection; and

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<sup>3</sup> It is noted that Mr. McGuire has voluntarily waived some of the protection afforded him in the Roof Order of Protection. In the 18 months since being appointed to the Roof case, Mr. McGuire has resolved 3 of his other capital cases. This includes a double-homicide jury trial involving a police officer's death, ultimately tried non-capitally; and, two other cases were resolved with life (without parole) sentences. Mr. McGuire also represented Barnes in a jury trial in November 2015, which resulted in a hung jury, in an unrelated jail assault case from 2007 involving a correctional officer in Edgefield County.

coupled with the fact that a new Solicitor was to be elected to the Eleventh Circuit in November 2016, then the case might be resolved in some manner other than a capital trial without the need for mitigation resources. Mr. Bloom accorded deference to OID since OID ultimately controlled the expenditures for all defense services in this case, as is required per state law. Bloom informs the Court that while certain mitigation experts and investigation have been authorized by this Court, Bloom has put such experts "on hold." at the specific request of OID, until such determination was made as to how the case would proceed. Bloom informs the Court that this means there is still much mitigation investigation to be done.

Thus, this Court finds and concludes as a matter of law, that it would likely constitute ineffective assistance of counsel to force Mr. Bloom to trial in this capital case by January or February 2017 when he has, in effect, abided by requests from OID to minimize costs regarding the mitigation investigation for a potential sentencing phase in the event there was to be no sentencing phase; and where Bloom has also relied on the same Roof Order of Protection for Bloom's co-counsel since Bloom obviously knew the case could not be called for trial by Order of the Chief Justice until McGuire's trial duties in Roof had concluded.

Finally, at the conclusion of this Status Conference, this Court informed all attorneys that this case would immediately be moved to a trial track, that the Roof Order of Protection for McGuire was rescinded as applied to Barnes' case, and that all attorneys needed to move expeditiously in preparing this case for trial. The Court granted the State's reasonable request to be allowed 30-days --- after taking the Oath of Office --- to review the case-file, meet with the victim's family, and become familiar with the parameters of

this case. The Court specifically recognizes the diligence and commitment of Mr. Hubbard to move this case as expeditiously as possible, and the Court is grateful to Mr. Hubbard in his participation in this telephone Status Conference when he is not even yet in Office. This Court determined that the next Status Conference would be scheduled within 30-days of Solicitor-elect Hubbard's Oath of Office on January 11, 2017; hence, the next Status Conference in this case will be scheduled for the week of February 13-17, 2017.

IT IS THEREFORE ORDERED that:

1. The trial of this case cannot be scheduled for a January or February 2017 term of General Sessions Court in Edgefield County, for the reasons as set forth above and herein.
2. All attorneys in this case are instructed to prepare this case in an expeditious manner for trial.
3. The next Status Conference in this case will be scheduled for the week of February 13-17, 2017.

AND IT IS SO ORDERED.

Dated Jan 25, 2017  
St. George, S.C.  
*[Signature]*

*[Signature]*  
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Hon. Diane S. Goodstein  
Assigned Circuit Court Judge

STATE OF SOUTH CAROLINA )  
COUNTY OF EDGEFIELD )  
STATE OF SOUTH CAROLINA )  
VS. )  
STEVEN L. BARNES )  
Defendant. )

IN THE COURT OF GENERAL SESSIONS  
FOR THE ELEVENTH JUDICIAL CIRCUIT  
Ind.Nos. 2005-GS-19-00457 and 00273

SUPPLEMENTAL  
STATUS CONFERENCE ORDER

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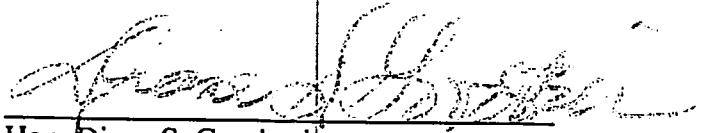
EDGEFIELD COUNTY  
CLERK OF COURT  
CHARLES L. REEL

In an Order dated January 4, 2017, which is specifically incorporated herein, the Court instructed the State and defense counsel to report back to this Court by the week of February 13, 2017, so that the new Solicitor Samuel R. Hubbard III, had time to review this case and could render a decision as to how the State intended to proceed in this matter. This case has been remanded to this Court for a new trial, and was previously a capital case. *See State v. Barnes*, 407 S.C. 27, 753 S.E.2d 545 (2014)(*Barnes I*); and, *State v. Barnes*, 413 S.C. 1, 774 S.E.2d 454 (2015)(*Barnes II*).

The State and attorneys for the defendant request an additional 30-days. Solicitor Hubbard and attorney Bloom have met to share information. They require further discussions in this case. Also, the Solicitor has made plans to meet with the victim's family this month. And, attorneys Bloom and McGuire request time to conduct a routine mental status evaluation with their client this month. Both counsel for the State and the defense represent that they are expeditiously preparing this case for trial or disposition, and the request for an additional 30-days is not intended for any undue delay. Thus, the parties respectfully move and consent to an additional 30-days in which to conduct further discussions, exchange information, and other related matters. This Court finds the request reasonable under all the circumstances of this case.

IT IS THEREFORE ORDERED that a Status Conference will be scheduled in this case in 30-days. The parties will report back to this Court during the week of March 13-17, 2017.

AND IT IS SO ORDERED.



Dated: February 16, 2017  
St. George, S.C.

Hon. Diane S. Goodstein  
Assigned Circuit Court Judge

STATE OF SOUTH CAROLINA )  
COUNTY OF EDGEFIELD )  
STATE OF SOUTH CAROLINA )  
VS. )  
STEVEN L. BARNES )  
Defendant. )

IN THE COURT OF GENERAL SESSIONS  
FOR THE ELEVENTH JUDICIAL CIRCUIT  
Ind.Nos. 2005-GS-19-00457 and 00273  
SECOND  
SUPPLEMENTAL  
STATUS CONFERENCE ORDER

EDGEFIELD COUNTY  
CLERK OF COURT  
CHARLES L. FEELE  
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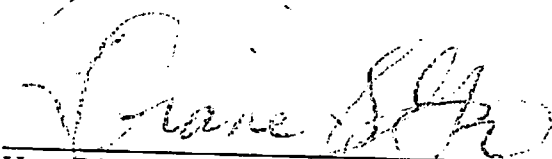
In Orders dated January 4, 2017, and February 16, 2017, both of which are specifically incorporated herein, the Court instructed the State and defense counsel to report back to this Court after March 17, 2017, to allow the parties including the new Solicitor Samuel R. Hubbard III, time to review this case and inform this Court as to how the State intended to proceed in this matter. This case has been remanded to this Court for a new trial, and was previously a capital case. *See State v. Barnes*, 407 S.C. 27, 753 S.E.2d 545 (2014)(*Barnes I*); and, *State v. Barnes*, 413 S.C. 1, 774 S.E.2d 454 (2015)(*Barnes II*).

The State and attorneys for the defendant request an additional 30-days. The Solicitor's Office continues to meet with defense counsel to discuss a range of issues. The parties have shared relevant information, and have continued their discussions in this case. Both counsel for the State and the defense represent that they are expeditiously preparing this case for trial or disposition, and the request for an additional 30-days is not intended for any undue delay. Thus, the parties respectfully move and consent to an additional 30-days in which to conduct further discussions, exchange information, and other related matters. This Court finds the request reasonable under all the circumstances of this case.

IT IS THEREFORE ORDERED that a Final Status Conference will be scheduled in this case in 30-days or as soon thereafter as such can be scheduled. The parties will report back to this Court during the week of April 24 - 28, 2017.

AND IT IS SO ORDERED.

Dated: 3-27, 2017  
St. George, S.C.

  
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Hon. Diane S. Goodstein  
Assigned Circuit Court Judge