

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County  
The Honorable William P. Keesley, Circuit Court Judge

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The State of South Carolina,

Respondent,

vs.

Kevin Lamar Gary,

Appellant.

Appellate Case No. 2016-001603

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**MOTION TO HOLD  
APPEAL IN ABEYANCE**

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Respondent, though undersigned counsel, would respectfully show this Court the following:

I.

This appeal arises from a conviction for ABHAN following trial on July 25-27, 2016, before the Honorable William P. Keesley. Appellant Gary has raised two issues on appeal, including an argument that Gary is entitled to a new trial based on the South Carolina Supreme Court's opinion in State v. Beaty, Op. No. 2015-00718 (S.C. Sup. Ct. filed December 29, 2016), authored by Chief Justice Pleicones, which would alter the procedure for closing arguments. On March 24, 2017, the Supreme Court took the unusual step of granting the petition for rehearing and

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**SC Court of Appeals**

held oral argument for the rehearing on June 15, 2017 (Chief Justice Pleicones, who by June 15, had finished his term, was not one of the sitting justices, instead Justice James sat for argument on the rehearing). At issue is the Supreme Court's authority to alter the current criminal procedure and also whether due process requires a certain order and manner of closing argument. To date, the Supreme Court has not issued an order on the rehearing.

II.

The same issue in Beaty is before this Court. However, given that a final ruling from the rehearing is pending, what rule, if any, that would be created from Beaty is unclear, and the standard for determining prejudice from following the prior procedural rule is also unclear. This Court and the parties would best be served by waiting for a final decision from Beaty so that briefing can focus on the final ruling from that case.

III.

Accordingly, Respondent respectfully requests the matter be held in abeyance until the petition for rehearing from Beaty is decided. Respondent does not oppose Appellant submitting an amended initial brief upon a decision by the Supreme Court on the rehearing.

IV.

Respondent also moves to hold the time-lines in abeyance until this Court rules on the State's motion.

V.

WHEREFORE, Respondent prays that this Court issue hold this matter in abeyance pending the outcome of the rehearing in State v. Beaty; and for such other and further relief as the Court may deem just and proper.

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IN THE COURT OF APPEALS

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The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No: 2016-001603.

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THE STATE,

Respondent,

v.

KEVIN LAMAR GARY,

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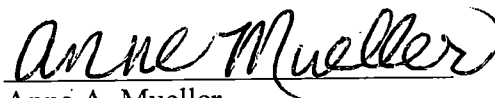
**PROOF OF SERVICE**

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I, Anne Mueller, certify that I have served the Motion to Hold Appeal in Abeyance on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record Laura R. Baer, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

I further certify that all parties required by Rule to be served have been served.

This 25<sup>th</sup> day of July, 2017.

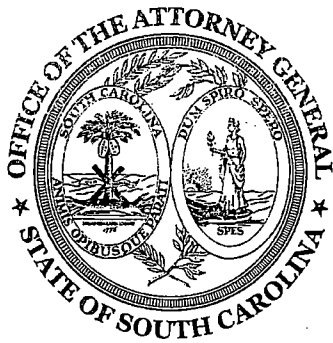


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ALAN WILSON  
ATTORNEY GENERAL

July 25, 2017

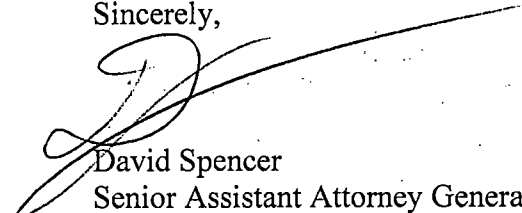
The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29201

**Re: The State v. Kevin Lamar Gary**  
**Appellate Case No: 2016-001603**

Dear Ms. Kitchings:

Enclosed please find an original and six (6) copies of the Motion to Hold Appeal in Abeyance, including proof of service, in the above-referenced case.

Sincerely,

  
David Spencer  
Senior Assistant Attorney General  
S.C. Bar No: 15608

DS/aam  
Enclosures

cc: Laura R. Baer (with two copies)  
Ms. Trisha Allen