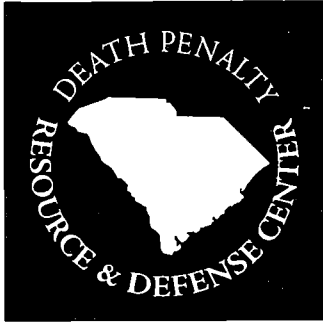




2005-031616

op# 26408

RECEIVED

JAN 15 2013

S.C. SUPREME COURT

January 14, 2013

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

Re: *Bobby Wayne Stone v. State of South Carolina*

Dear Mr. Shearouse:

Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), I am writing to report on the status of the above-referenced capital post-conviction relief case. The evidentiary hearing in this case began on April 23, 2012. Several witnesses were not available during that time; therefore, the remainder of the evidentiary hearing took place on August 10, 2012. The PCR Court has requested post-hearing brief, which are due on February 11, 2013.

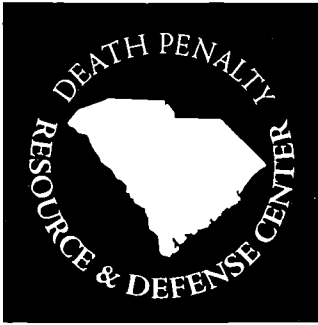
If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely yours,

Emily C. Paavola
(JP)

Emily C. Paavola

cc: John H. Blume



RECEIVED

NOV 19 2012

S.C. SUPREME COURT

2005-031616

OP# 26408

November 15, 2012

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

Re: *Bobby Wayne Stone v. State of South Carolina*

Dear Mr. Shearouse:

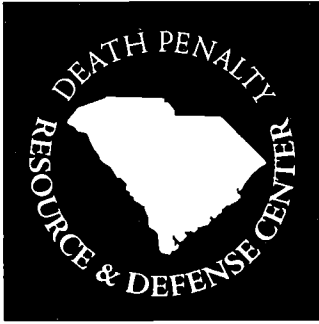
Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), I am writing to report on the status of the above-referenced capital post-conviction relief case. The evidentiary hearing in this case began on April 23, 2012. Several witnesses were not available during that time; therefore, the remainder of the evidentiary hearing took place on August 10, 2012. The PCR Court has requested post-hearing briefing after the transcripts become available.

If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely yours,

Emily C. Paavola

cc: John H. Blume



RECEIVED

SEP 19 2012

S.C. SUPREME COURT

September 17, 2012

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

Re: *Bobby Wayne Stone v. State of South Carolina*

Dear Mr. Shearouse:

Pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), I am writing to report on the status of the above-referenced capital post-conviction relief case. The evidentiary hearing in this case began on April 23, 2012. Several witnesses were not available during that time; therefore, the remainder of the evidentiary hearing took place on August 10, 2012. The PCR Court has requested post-hearing briefing after the transcripts become available.

If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely yours,

Emily C. Paavola
Emily C. Paavola

cc: John H. Blume

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.753.7057
Fax. 803.937.1707
robert@robertlominack.com

June 4, 2012

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RECEIVED

JUN - 5 2012

Re: *Bobby Wayne Stone v. South Carolina*

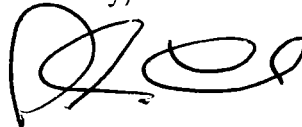
S.C. Supreme Court

Dear Mr. Shearouse,

I am writing regarding the status of the above case. The evidentiary hearing in this case began on April 23, 2012. Several witnesses were not available during that time; therefore, the parties are in the process of scheduling the remainder of the evidentiary hearing.

If you need further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

cc: Al Simon
John H. Blume

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.351.0436
Fax. 803.937.1707
robert@robertlominack.com

August 1, 2012

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

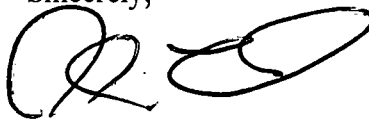
Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. The evidentiary hearing in this case began on April 23, 2012. Several witnesses were not available during that time; therefore, the remainder of the evidentiary hearing is scheduled for August 10, 2012.

If you need further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

cc: Al Simon
John H. Blume

RECEIVED

AUG 02 2012

S.C. SUPREME COURT

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.351.0436
Fax. 803.937.1707
robert@lominacklaw.com

April 2, 2012

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

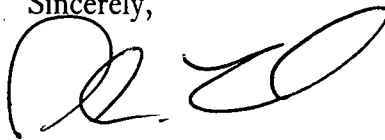
Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief in preparation for the evidentiary hearing, which is scheduled to begin on April 23, 2012.

If you need further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

cc: Al Simon
John H. Blume

RECEIVED

APR 08 2012

S.C. SUPREME COURT

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.351.0436
Fax. 803.937.1707
robert@lominacklaw.com

January 31, 2012

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief in preparation for the evidentiary hearing, which is scheduled to begin on April 23, 2012.

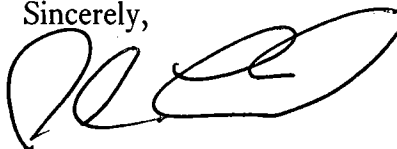
If you need further information, please do not hesitate to contact me.

RECEIVED

FEB 01 2012

S.C. SUPREME COURT

Sincerely,



Robert Lominack

cc: Al Simon
John H. Blume

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.351.0436
Fax. 803.937.1707
robert@lominacklaw.com

December 1, 2011

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: *Bobby Wayne Stone v. South Carolina*

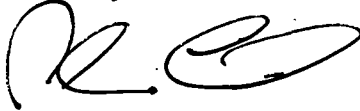
Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief in preparation for the evidentiary hearing, which is scheduled to begin on April 23, 2012.

If you need further information, please do not hesitate to contact me.

RECEIVED
DEC 8 2011
S.C. SUPREME COURT

Sincerely,



Robert Lominack

cc: Al Simon
John H. Blume

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
robert@lominacklaw.com

October 2, 2011

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief in preparation for the evidentiary hearing, which is scheduled to begin on April 23, 2012.

If you need further information, please do not hesitate to contact me.

RECEIVED
OCT 06 2011
S.C. SUPREME COURT

Sincerely,



Robert Lominack

cc: Al Simon
John H. Blume

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
robert@lominacklaw.com

August 1, 2011

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

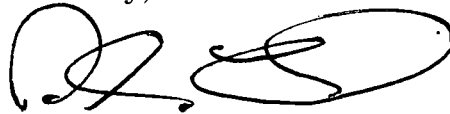
Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief in preparation for the evidentiary hearing.

If you need further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

cc: Al Simon
John H. Blume

RECEIVED
AUG 03 2011
S.C. SUPREME COURT

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
robert@lominacklaw.com

June 1, 2011

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

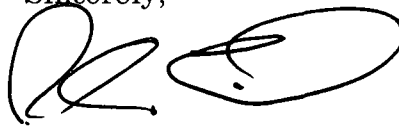
Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief in preparation for the evidentiary hearing.

If you need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Lominack', with a large, stylized 'L' and a circular flourish at the end.

Robert Lominack

cc: Al Simon
John H. Blume

RECEIVED

JUN 02 2011

S.C. SUPREME COURT

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
robert@lominacklaw.com

April 1, 2011

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RECEIVED

APR 04 2011

S.C. SUPREME COURT

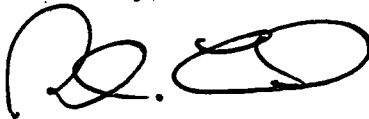
Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief in preparation for the evidentiary hearing.

If you need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Lominack', written over a horizontal line.

Robert Lominack

cc: Al Simon
John H. Blume

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
robert@lominacklaw.com

February 1, 2011

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief in preparation for the evidentiary hearing.

If you need further information, please do not hesitate to contact me.

RECEIVED

FEB 02 2011

S.C. SUPREME COURT

Sincerely,



Robert Lominack

cc: Al Simon
John H. Blume

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

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Fax. 803.937.1707
robert@lominacklaw.com

December 1, 2010

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief in preparation for the upcoming evidentiary hearing.

If you need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Lominack', written over a horizontal line.

Robert Lominack

cc: Al Simon
John H. Blume

RECEIVED

DEC 02 2010

S.C. SUPREME COURT

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
robert@lominacklaw.com

October 1, 2010

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RECEIVED

OCT 05 2010

S.C. SUPREME COURT

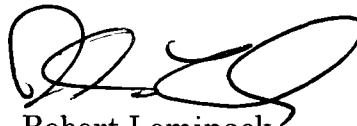
Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief. The evidentiary hearing will be held in January 2011.

If you need further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

cc: Al Simon
John H. Blume

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
robert@lominacklaw.com

July 31, 2010

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief. The evidentiary hearing has been scheduled for October 4, 2010.

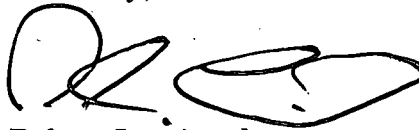
If you need further information, please do not hesitate to contact me.

RECEIVED

AUG 03 2010

S.C. SUPREME COURT

Sincerely,



Robert Lominack

cc: Al Simon
John H. Blume

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
robert@lominacklaw.com

June 1, 2010

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief. The evidentiary hearing has been scheduled for October 4, 2010.

If you need further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

RECEIVED

JUN 03 2010

S.C. SUPREME COURT

cc: Al Simon
John H. Blume

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
rlominack@gmail.com

April 2, 2010

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RECEIVED

APR 05 2010

S.C. SUPREME COURT

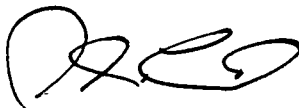
Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief. A scheduling order has been agreed upon and the evidentiary hearing has been scheduled for October 4, 2010.

If you need further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

cc: Al Simon
John H. Blume

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
rlominack@gmail.com

January 29, 2010

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief. Both parties await resolution of motions concerning the manner in which the PCR court should address funding issues.

If you need further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

cc: S. Creighton Waters
John H. Blume

RECEIVED

FEB 01 2010

S.C. SUPREME COURT

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

ROBERT LOMINACK
ATTORNEY AT LAW

Post Office Box 5508
Columbia, SC 29250

Tel. 803.771.7271
Fax. 803.937.1707
robertlominack@mac.com

December 4, 2009

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief. Both parties await resolution of motions concerning the manner in which the PCR court should address funding issues.

If you need further information, please do not hesitate to contact me.

Sincerely,



Robert Lominack

cc: S. Creighton Waters
John H. Blume

RECEIVED

DEC 07 2009

S.C. SUPREME COURT

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

Post Office Box 5508 • Columbia, SC 29250

Tel. 803.753.7057 • Fax 803.937.1707 • robertlominack@mac.com

September 30, 2009

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

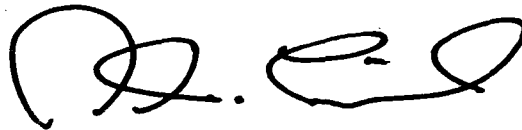
I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief. Both parties await resolution of motions concerning the manner in which the PCR court should address funding issues.

If you need further information, please do not hesitate to contact me.

Sincerely,

RECEIVED

OCT 02 2009



Robert Lominack

S.C. SUPREME COURT

cc: S. Creighton Waters
John H. Blume

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

Post Office Box 5508 • Columbia, SC 29250

Tel. 803.753.7057 • Fax 803.937.1707 • robertlominack@mac.com

July 30, 2009

RECEIVED

AUG 03 2009

S.C. SUPREME COURT

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

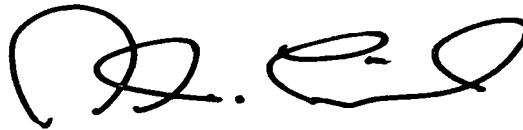
Re: *Bobby Wayne Stone v. South Carolina*

Dear Mr. Shearouse,

I am writing regarding the status of the above case. Counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief. Both parties have filed motions concerning the manner in which the PCR court should address funding motions. That motion should be resolved shortly.

If you need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Lominack', with a large, stylized initial 'R'.

Robert Lominack

cc: S. Creighton Waters
John H. Blume

LAW OFFICES OF ROBERT E. LOMINACK, P.C.

Post Office Box 5508 • Columbia, SC 29250

Tel. 803.753.7057 • Fax 803.937.1707 • robertlominack@mac.com

May 6, 2009

Hon. Daniel Shearouse
Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RECEIVED

MAY 07 2009

Re: *Bobby Wayne Stone v. South Carolina*

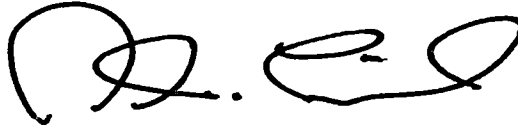
S.C. SUPREME COURT

Dear Mr. Shearouse,

I am writing in response to your letter requesting the status of the above case. An amended application was recently filed and counsel continue to investigate and further develop the facts underlying the post-conviction claims for relief.

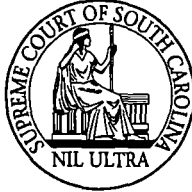
If you need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. E. Lominack', with a large, stylized initial 'R'.

Robert Lominack

cc: Honorable Michael G. Nettles
S. Creighton Waters
John H. Blume



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

May 4, 2009

John H. Blume, III, Esquire
Blume Weyble & Norris, LLC
P.O. Box 11744
Columbia, SC 29211

Robert E. Lominack, Esquire
Law Offices of Robert E. Lominack, P.C.
P.O. Box 5508
Columbia, SC 29250

Re: Stone, Bobby Wayne v. State

As you know, the execution in this matter has been stayed pursuant to In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E2d. 140 (1996), to allow the defendant to pursue post-conviction relief, and you represent him in that PCR action which is filed as 2008-CP-43-0905. Under In re Stays of Execution in Capital Cases, the defendant must serve and file "a letter setting forth the status of the post-conviction relief matter every sixty (60) days. . . . If the Court determines this letter fails to show that the defendant is diligently pursuing the post-conviction relief action, the Court may issue an order dissolving the stay or setting forth additional requirements the defendant must meet to maintain the stay."

In the present case, you have not filed the required status letter. Therefore, it will be necessary for you to serve and file the required status letter within ten (10) days of the date of this letter. If you fail to do so or fail to serve and file a status letter every sixty (60) days thereafter, an execution notice may be issued.

John H. Blume, III, Esquire
Robert E. Lominack, Esquire
Page Two
May 4, 2009

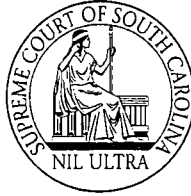
Very truly yours,

A handwritten signature in black ink, appearing to be "D. R. S.", with a long horizontal line extending to the right.

CLERK

DES/dmh

cc: Assistant Attorney General S. Creighton Waters
The Honorable Michael G. Nettles



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 21, 2008

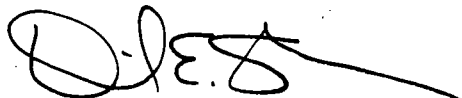
Chief Appellate Defender Joseph L. Savitz, III
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Stone, Bobby Wayne

Dear Counsel:

Enclosed is the order issued in the above entitled matter.

Very truly yours,


CLERK

DES/dmh

Enclosure

cc: Assistant Attorney General S. Creighton Waters
The Honorable Cecil Kelly Jackson
The Honorable John M. Milling
Motte L. Talley, Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

Bobby Wayne Stone,

Appellant.

ORDER

Appellant was convicted of murder, first degree burglary and possession of a weapon during the commission of a violent crime. He was sentenced to death. This Court affirmed appellant's convictions and sentence. State v. Stone, Op. No. 26408 (S.C. Sup. Ct. filed December 20, 2007). The Court denied rehearing on January 23, 2008.

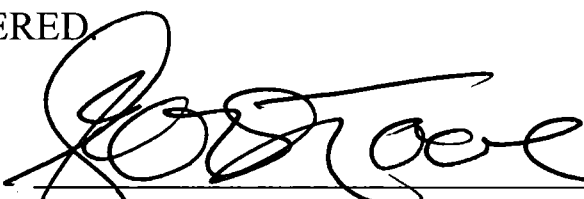
Appellant now seeks a stay of execution so that he can pursue post-conviction relief (PCR). The State has submitted a letter in which it states it appears a stay of execution is appropriate.

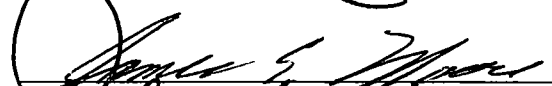
We find appellant has met the requirements of In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996) and therefore grant the petition for a stay of execution. The stay shall remain in effect to the extent provided by this Court in In re Stays of Execution in

Capital Cases, supra.

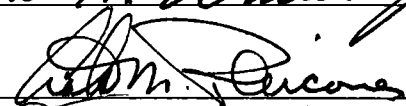
The Honorable John M. Milling, is hereby assigned to appellant's PCR matter. Judge Milling shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard to whether there is a term of court scheduled. Judge Milling shall conduct a hearing on appellant's desires regarding counsel within thirty days of the date of this order.

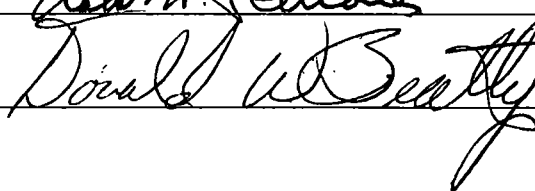
IT IS SO ORDERED.


C. J.


J.


J.


J.


J.

Columbia, South Carolina

February 21, 2008



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED

January 30, 2008

JAN 30 2008

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

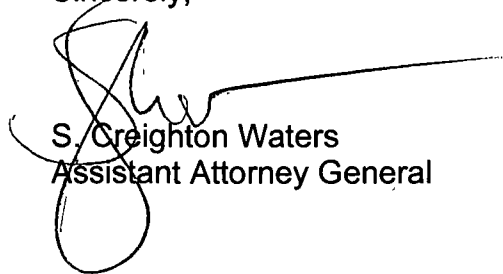
RE: The State v. Bobby Wayne Stone

Dear Mr. Shearouse:

Please accept this letter in response to the Petitioner's Petition for Stay of Execution. Since Appellant identifies at least one issue of the sort appropriate for PCR, it thus appears that a stay is appropriate solely for the purpose of litigating a PCR action consistent with this Court's opinion in In re: Stays. The State thus also requests that a judge be assigned to this capital PCR action and a hearing regarding appointment of counsel be held.

Thank you for your attention to this matter. If there are any further questions or concerns, do not hesitate to contact me.

Sincerely,


S. Creighton Waters
Assistant Attorney General

SCW/ap

Enclosures

cc: Joseph L. Savitz, III

ORIGINAL

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Appeal from Sumter County

JAN 23 2008

Howard P. King, Judge

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

BOBBY WAYNE STONE,

APPELLANT

PETITION FOR STAY OF EXECUTION

Counsel for Bobby Wayne Stone petitions the Court for a stay of execution, pursuant to *In Re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), to allow Stone the opportunity to seek post-conviction relief in the lower court.

I

Stone's conviction for murder and death sentence were affirmed by the Court in *State v. Bobby Wayne Stone*, Opinion No. 26408, filed December 20, 2007. The Supreme Court denied rehearing January 23, 2008.

II

In the *Capital Cases* opinion, 471 S.E.2d at 141, the Court stated, "If the [capital] defendant desires a stay to pursue state post-conviction relief, the defendant must, within ten (10) days of the

date of the issuance of the execution notice, file a motion to stay with this Court, setting forth the issues intended to be raised in the application for post-conviction relief.”

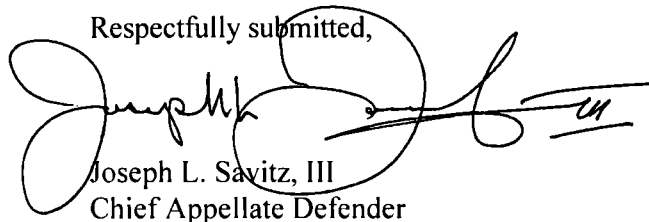
III

At a minimum, Stone will argue in post-conviction relief that he did not receive effective assistance of either trial or appellate counsel because the Court held the following issue was not preserved for review.

The trial judge committed reversible error by permitting the victim’s widow to testify that she had attempted suicide when she learned – from a message left on her answering machine – that the Supreme Court had reversed Stone’s death sentence and “they were going to retry this case over again,” as this testimony introduced an arbitrary factor into Stone’s resentencing, in violation of *S.C. Code Section 16-3-25(C)(1)*.

A claim that the post-conviction relief applicant did not receive effective assistance of counsel is cognizable under *S.C. Code Section 17-27-20(a)(1)*: “the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State.” See, also, *Strickland v. Washington*, 466 U.S. 668 (1984), and *Everts v. Lucey*, 469 U.S. 387 (1985).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joseph L. Savitz, III', with a stylized flourish extending to the right.

Joseph L. Savitz, III
Chief Appellate Defender

Attorney for Appellant

This 23rd day of January, 2008.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County

Howard P. King, Judge

THE STATE,

RESPONDENT,

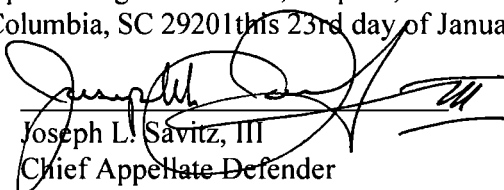
V.

BOBBY WAYNE STONE,

APPELLANT

CERTIFICATE OF SERVICE

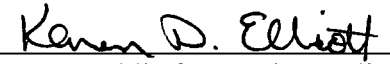
The undersigned attorney hereby certifies that a true copy of the motion for stay of execution in the above entitled case has been served upon Creighton Waters, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 23rd day of January, 2008.



Joseph L. Savitz, III
Chief Appellate Defender

Attorney for Appellant

SWORN TO BEFORE ME this 23rd day
of January, 2008.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 19, 2017.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 23, 2008

RECEIVED

JAN 23 2008

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
Post Office Box 11330
Columbia, SC 29211

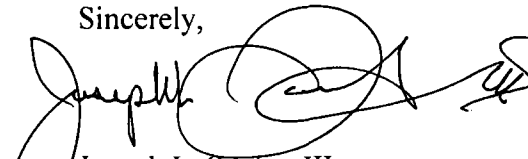
Re: The State v. Bobby Wayne Stone

Dear Mr. Shearouse:

Enclosed is our petition for stay of execution.

Please do not hesitate to contact me if you have any questions or I may be of further assistance.

Sincerely,



Joseph L. Savitz, III
Chief Appellate Defender

JLS,III/kde

cc: S. Creighton Waters
Bobby Wayne Stone



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 23, 2008

REMITTITUR

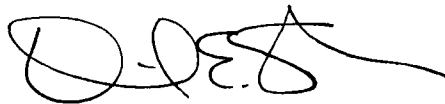
The Honorable James C. Campbell
Clerk of Court, Sumter County
141 N. Main Street., Rm 308
Sumter, SC 29150-4965

Re: The State v. Stone, Bobby Wayne
1996-GS-43-00698

Dear Mr. Campbell:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,

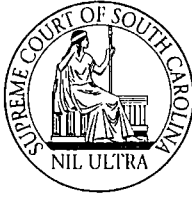


CLERK

DES/dmh

Enclosure

cc: Chief Appellate Defender Joseph L. Savitz, III
Assistant Attorney General S. Creighton Waters
The Honorable Cecil Kelly Jackson



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 23, 2008

Chief Appellate Defender Joseph L. Savitz, III
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Stone, Bobby Wayne

Dear Counsel:

The Court has issued the following Order on your Petition for Rehearing in the above matter:

“Petition for Rehearing is denied.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

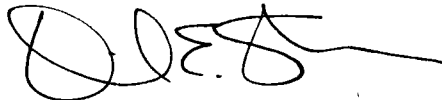
s/ Donald W. Beatty J.

January 23, 2008.”

The remittitur is today being forwarded to the lower court.

Chief Appellate Defender
Joseph L. Savitz, III
Page Two
January 23, 2008

Very truly yours,

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

CLERK

DES/dmh

cc: Assistant Attorney General S. Creighton Waters
The Honorable Cecil Kelly Jackson

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

THE STATE,

RESPONDENT,

RECEIVED

JAN = 4 2003

S.C. SUPREME COURT

V.

BOBBY WAYNE STONE,

APPELLANT

Appeal from Sumter County

Howard P. King, Circuit Court Judge

Opinion No. 26408

PETITION FOR REHEARING

Counsel for Bobby Wayne Stone petitions for rehearing pursuant to *Rule 221(a), SCACR*, because the Court's procedural bar analysis is inconsistent with the analytical framework it utilized in *State v. Burkhart*, 371 S.C. 482, 640 S.E.2d 450 (2007), which counsel also argued. The Court writes, "If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call." On the other hand, the Court should not require either trial or appellate counsel to anticipate a procedural Steven Bartman lurking in the appellate box seats.

Contrary to the Court's opinion in this case, appellate counsel did not abandon "the issue of relevance" and address "only the effect this testimony may have had on the jury." Counsel modeled the Brief of Appellant and his oral argument on the brief he filed in *Burkhart* and the Court's

subsequent opinion in that case. The cases cited by counsel - including *Burkhart*, but excepting *State v. Crisp*, 362 S.C. 412, 608 S.E.2d 429 (2005), and *State v. Owens*, 362 S.C. 175, 607 S.E.2d 78 (2004) – all concern the issue of legal relevance.

The argument presented in the *Burkhart* brief read:

The judge erred by allowing an expert witness, an employee of the South Carolina Department of Corrections, to testify about the nature and quality of life for a capital defendant sentenced by the jury to life without parole, since such “evidence” is both speculative and arbitrary and violates *S.C. Code Section 16-3-20(C)* and *16-3-25(C)(1)*, as well as *State v. Plath*, 281 S.C. 1, 313 S.E.2d 619 (1984).

Trial counsel had not argued that the State’s evidence regarding general prison conditions constituted an arbitrary factor. Nevertheless, the Court held that “this entire subject matter injected an arbitrary factor into the jury’s sentencing deliberations.” 640 S.E.2d at 454. The issue presented in the present case reads:

The trial judge committed reversible error by permitting the victim’s widow to testify that she had attempted suicide when she learned – from a message left on her answering machine – that the Supreme Court had reversed Stone’s death sentence and “they were going to retry this case over again,” as his testimony introduced an arbitrary factor into Stone’s resentencing, in violation of *S.C. Code Section 16-3-25(C)(1)*.

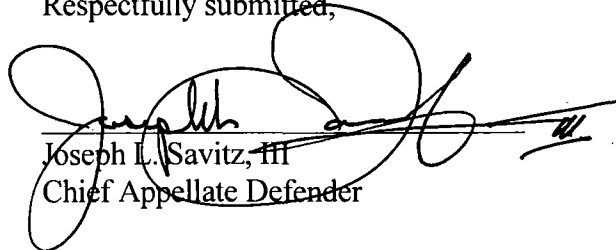
Counsel cannot reconcile the Court’s disparate treatment of these two cases. (Both involve capital resentencing.)

Counsel agrees that his brief and argument on appeal stressed “the effect [the widow’s] testimony may have had on the jury.” But it is axiomatic that “reversal is not required unless appellant was prejudiced by the error.” *State v. Mitchell*, 386 S.C. 572, 336 S.E.2d 150, 151 (1985). Thus, there are two components to reversible error: (1) the error itself and (2) the harm it caused. Moreover, *S.C. Code Section 16-3-25 (C)(1)* requires the Court to determine “[w]hether the

sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor." By its very nature, this argument can *only* be made on direct appeal.

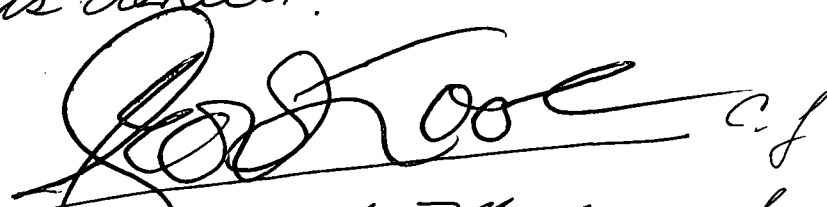
Both *Burkhart* and this case involve similar errors and similar harm. For this reason, the Court should grant rehearing, reverse Bobby Wayne Stone's death sentence and remand for resentencing.

Respectfully submitted,


Joseph L. Savitz, III
Chief Appellate Defender

This 4th day of January, 2008.

*Petition for Rehearing
is denied.*

 c.f.
 f.
 f.
 f.
 f.
January 23, 2008

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

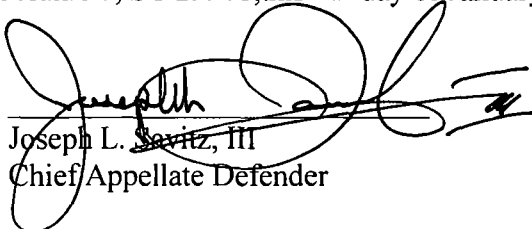
V.

BOBBY WAYNE STONE,

APPELLANT

CERTIFICATE OF SERVICE

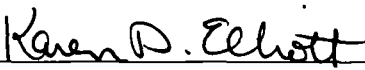
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon S. Creighton Waters, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of January, 2008.



Joseph L. Sevitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 4th day
of January, 2008.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 19, 2017.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General S. Creighton Waters, all of Columbia, and Solicitor Cecil Kelly Jackson, of Sumter, for Respondent.

CHIEF JUSTICE TOAL: This is an appeal from a capital sentencing proceeding. The jury sentenced Appellant Bobby Wayne Stone to death, and Appellant argues that testimony from the victim's widow impermissibly injected an arbitrary factor into the jury's deliberations. Appellant did not raise this issue at trial, and the issue is therefore not preserved for review. For this reason, we express no opinion on the merits, and we affirm the trial court's decision.

FACTUAL/PROCEDURAL BACKGROUND

This case arises out of the shooting death of a Sumter County Sheriff's Deputy. According to Appellant, he began the day leading up to the fatal encounter by purchasing some alcohol and two firearms. Appellant spent the remainder of the day wandering in the woods near what would become the crime scene, shooting the firearms and becoming increasingly intoxicated. Towards the end of the day, Appellant attempted to visit the home of an acquaintance near the woods.

The acquaintance asked Appellant to leave her property, and the acquaintance later reported the incident to the police. After hearing banging on a door to her home and gunshots outside her house, the acquaintance phoned the police again. The victim was the first officer to respond to the call, and the evidence at trial established that Appellant was on the acquaintance's porch near a side door when the victim arrived at the scene. The occupants of the home directed the victim towards the porch as the source of the disturbances, and as the victim neared the side porch, he sustained two fatal gunshot wounds. While the State alleged that Appellant shot the victim intentionally, Appellant claimed that he was startled when the victim turned a corner outside the home and yelled "Halt!" or "Hold it!" and that the gun fired accidentally.

A jury convicted Appellant of murder and sentenced him to death. On appeal, this Court affirmed Appellant's convictions but reversed his death sentence. *State v. Stone*, 350 S.C. 442, 567 S.E.2d 544 (2002) (remanding for a new sentencing proceeding based on the improper exclusion of a juror from the penalty phase, the failure to charge the statutory mitigator addressing the defendant's impairment or mentality at the time of the crime, and the failure

to instruct the jury that a life sentence meant life imprisonment without the possibility of parole). This Court remanded the case to the trial court to conduct a second sentencing proceeding. *Id.*

On remand, the State called several members of the victim's family and former co-workers as witnesses. The record reveals that the primary purpose of these witnesses' testimonies was to describe the impact of the victim's death on these individuals and on the community. One such witness was the victim's widow, and in response to a question regarding "significant events in her life" since the murder, the victim's widow testified that she had attempted suicide after learning that this Court had reversed Appellant's initial death sentence and that there would be another sentencing proceeding in this case. At the conclusion of the second sentencing proceeding, the jury sentenced Appellant to death.

This appeal followed, and Appellant raises the following issue for review:

Did the victim's widow's testimony regarding her suicide attempt impermissibly inject an arbitrary factor into the jury's deliberations?

LAW/ANALYSIS

Appellant argues that the victim's widow's testimony regarding her suicide attempt impermissibly injected an arbitrary factor into the jury's deliberations. We disagree.

Appellant's argument is not preserved for review. At trial, Appellant objected as the victim's widow began to describe her suicide attempt. The record reveals that Appellant based his objection on causation grounds, arguing that the testimony implied that the cause of the suicide attempt was not the victim's murder, but the financial pressures the victim's widow was experiencing and the fact that Appellant would have another sentencing proceeding. In allowing the testimony, the trial court held that the victim's widow had attributed the facts relayed in the testimony to her relationship with the victim, and that the testimony was therefore relevant and admissible.

Appellant's argument before this Court goes along quite different lines. Appellant now argues that the victim's widow's testimony improperly invited the jury to speculate about the finality of its decision on the appropriate punishment and improperly invited the jury to consider how its decision might impact the victim's widow's future health. Thus, while Appellant's argument below focused on what caused the victim's widow to attempt suicide – meaning, what caused the testimony to be relevant – Appellant's argument on appeal abandons the issue of relevance and addresses only the effect this testimony may have had on the jury. Because Appellant did not argue these grounds in support of his objection at trial, Appellant's argument is not preserved for review. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) (providing that in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court).

Appellant alleges that his argument on appeal is simply an augmentation of his objection at trial, but a thoughtful examination reveals that this is not so. Primarily, Appellant's objection at trial was based on relevance, and that issue has been abandoned here. Second, whether the suicide attempt by the victim's spouse minimized the jury's sense of responsibility (by suggesting that the jury's ultimate decision would be subject to review by a higher court) or maximized the jury's sense of responsibility (by implying that imposing a life sentence might lead the victim's widow to attempt suicide again), these considerations are wholly independent of the relevance argument presented below. If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call.¹

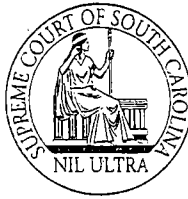
For these reasons, we hold that Appellant's argument is not preserved for review.

¹ It is important to note that in *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991), we held that South Carolina's strict error preservation rules are no less applicable in death penalty cases.

CONCLUSION

For the foregoing reasons, we affirm Appellant's sentence. Our review of similar prior cases illustrates that imposing the death sentence in this case would be neither excessive nor disproportionate in light of the crime and the defendant. *See State v. Sapp*, 366 S.C. 283, 621 S.E.2d 883 (2005) (holding that the death penalty was warranted where defendant killed a law enforcement officer while the officer was performing his official duties); *State v. Hughes*, 336 S.C. 585, 521 S.E.2d 500 (1999) (same); and *State v. Johnson*, 306 S.C. 119, 410 S.E.2d 547 (1991) (same).

MOORE, WALLER, PLEICONES and BEATTY, JJ., concur.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 9, 2007

Chief Appellate Defender Joseph L. Savitz, III
South Carolina Commission
on Indigent Defense
P O Box 11589
Columbia, SC 29211

Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General S. Creighton Waters
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Stone, Bobby Wayne

Dear Counsel:

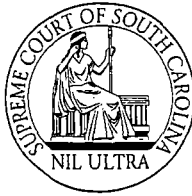
This is to confirm that oral argument in this matter has been moved from 10:00 a.m. on Thursday, November 15, 2007 to 11:00 a.m. on Wednesday, November 14, 2007.

Very truly yours,

CLERK

DES/jjp

cc: Solicitor Cecil Kelly Jackson



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 6, 2007

Chief Appellate Defender Joseph L. Savitz, III
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General S. Creighton Waters
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Stone, Bobby Wayne

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

Appellant	20 minutes
Respondent	20 minutes
Appellant in Reply	5 minutes

Chief Appellate Defender Joseph L. Savitz, III
Re: The State v. Stone, Bobby Wayne
November 6, 2007
Page two

Reminder:

This case is scheduled for hearing at 10:00 a.m. on Thursday, November 15, 2007.

Very truly yours,

Daniel E. Shearouse, Clerk

By Jean J. Peebles
Administrative Assistant

DES/jjp

cc: Solicitor Cecil Kelly Jackson



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

September 21, 2007

RECEIVED

SEP 21 2007

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

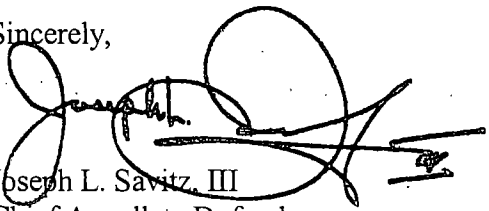
Re: *Buddy Newsome v. State*
State v. Rorey Jamar Johnson
State v. Bobby Wayne Stone

Dear Mr. Shearouse:

I have received notice that the above cases will probably be reached at the November 2007 term of Court. I would appreciate any consideration that may be given to schedule these cases on different dates.

By copy of this letter, I am informing opposing counsel of this request. Thank you for your consideration of this request.

Sincerely,


Joseph L. Savitz, III
Chief Appellate Defender

JLS,III/kde

cc: S. Creighon Waters, Esquire
Donald J. Zelenka, Esquire
Karen Ratigan, Esquire



HENRY McMASTER
ATTORNEY GENERAL

September 18, 2007

RECEIVED

SEP 18 2007

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

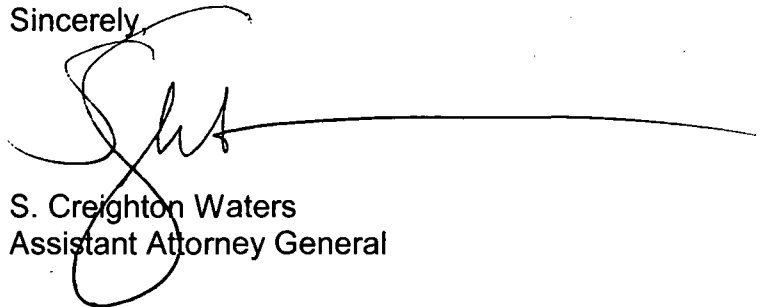
Re: The State v. Bobby Wayne Stone
Appeal from Sumter County

Dear Mr. Shearouse:

As requested by the court, enclosed please find five (5) additional copies of the ***Final Brief of Respondent***, dated September 6, 2007, along with proof of service in the above-referenced case.

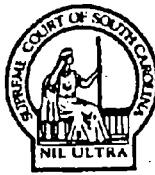
Should you need anything further, please do not hesitate to contact me.

Sincerely,



S. Creighton Waters
Assistant Attorney General

Enclosures



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Chief Appellate Defender Joseph L. Savitz, III
From: Daniel E. Shearouse
Date: September 14, 2007
RE: November Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the November 2007 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of October 30, 31, November 1, 14, 15. Please notify this office in writing prior to September 21, 2007 as to any scheduling conflicts for the November term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

The State v. Stone, Bobby Wayne



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Donald J. Zelenka
Assistant Attorney General S. Creighton Waters

From: Daniel E. Shearouse

Date: September 14, 2007

RE: November Preliminary List

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The State v. Stone, Bobby Wayne



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
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P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Cecil Kelly Jackson, Esquire
From: Daniel E. Shearouse
Date: September 14, 2007
RE: November Preliminary List

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The State v. Stone, Bobby Wayne



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED

SEP - 6 2007

S.C. SUPREME COURT

September 6, 2007

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

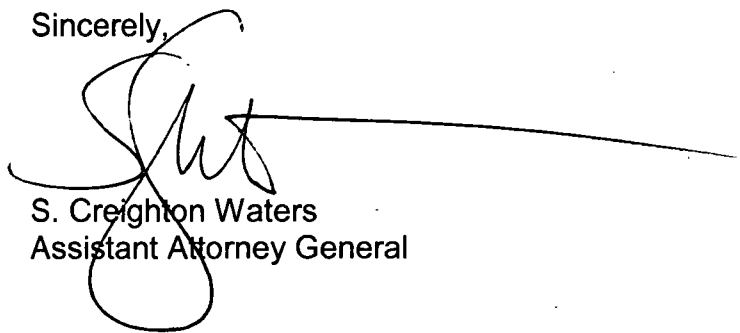
Re: The State v. Bobby Wayne Stone
Appeal from Sumter County

Dear Mr. Shearouse:

Enclosed please find the original and (9) nice copies of the ***Final Brief of Respondent***, dated September 6, 2007, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,



S. Creighton Waters
Assistant Attorney General

Enclosures

cc: Joseph L. Savitz, III, Esquire
Honorable C. Kelly Jackson
Sandi Wofford, Victims' Services

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Appeal from Sumter County

Howard P. King, Circuit Court Judge

RECEIVED

AUG 17 2007

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

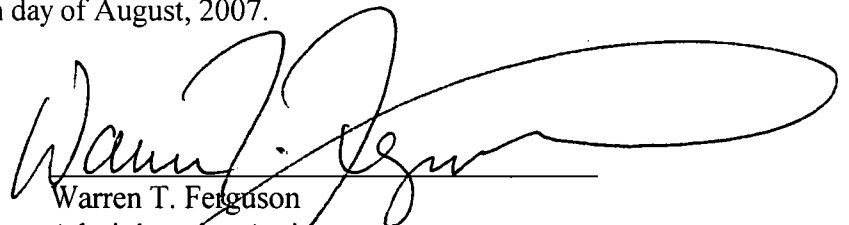
V.

BOBBY WAYNE STONE,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon S. Creighton Waters, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 17th day of August, 2007.


Warren T. Ferguson
Administrative Assistant

SUBSCRIBED AND SWORN TO before me
this 17th day of August, 2007.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 19, 2017.

The Supreme Court of South Carolina

The State,

Respondent

v.

Bobby Wayne Stone,

Appellant.

The Honorable Howard P. King
Sumter County

Trial Court Case No. 1996-GS-43-00698

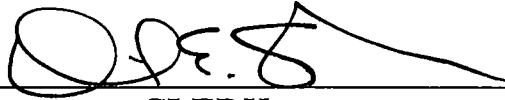
ORDER

For good cause having been shown, the time for serving and filing the Record on Appeal in the above entitled matter is hereby extended until August 17, 2007.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

July 17, 2007

cc: Chief Attorney Joseph L. Savitz, III
Assistant Attorney General S. Creighton Waters

ORIGINAL



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
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Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

July 13, 2007

RECEIVED

JUL 16 2007

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

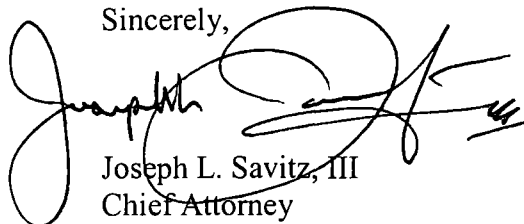
Re: The State v. Bobby Wayne Stone (capital case)

Dear Mr. Shearouse:

The record on appeal in this case is due to be served and filed with the Court July 18, 2007. However, because of my heavy workload at this time, I am requesting an extension of thirty days in which to serve and file the record.

By copy of this letter, I am informing S. Creighton Waters, of the Attorney General's Office, of my request.

Sincerely,



Joseph L. Savitz, III
Chief Attorney

JLS, III/kde

cc: S. Creighton Waters



HENRY McMASTER
ATTORNEY GENERAL

June 18, 2007

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JUN 21 2007

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

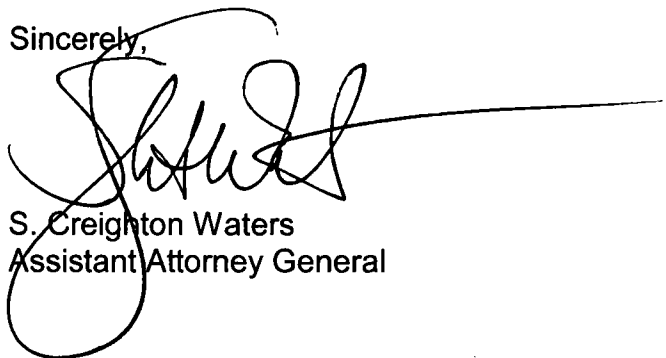
Re: The State v. Bobby Wayne Stone
Appeal from Sumter County

Dear Mr. Shearouse:

Enclosed please find the original ***Initial Brief of Respondent and Designation of Matter***, both dated June 18, 2007, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,



S. Creighton Waters
Assistant Attorney General

Enclosures

cc: Joseph L. Savitz, III, Esquire
Honorable C. Kelly Jackson
Sandi Wofford, Victims' Services

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

RECEIVED

JUN 21 2007

**S.C. SUPREME COURT
THE STATE,**

Appeal from Sumter County
Howard P. King, Circuit Court Judge

Respondent,

v.

BOBBY WAYNE STONE,

Appellant.

INITIAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

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THE HONORABLE C. KELLY JACKSON
Solicitor, Third Judicial Circuit
141 N Main Street
Sumter, SC 29150-4965
(803) 436-2185

ATTORNEYS FOR RESPONDENT.

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	5
A. 2/26/96: Sgt. Kubala is killed after responding to a 911 call from Ruth Griffith's house.	5
B. 2/26-27/96: Appellant is caught and gives a statement	7
C. Forensic evidence	9
D. Character and victim impact evidence	10
E. The defense's sentencing phase case	11
ARGUMENT	13
I. THERE WAS NO REVERSIBLE ERROR IN THE BRIEF REFERENCE DURING THE WIDOW'S DESCRIPTION OF A SUICIDE ATTEMPT TO THE PRIOR REVERSAL OF THE SENTENCING PHASE, WHERE: (1) THE SUICIDE ATTEMPT WAS OTHERWISE ADMISSIBLE AND SUFFICIENTLY LINKED TO THE IMPACT OF THE CRIME ON THE WIDOW, (2) THERE WAS NO ATTEMPT TO IMPERMISSIBLY MINIMIZE OR MAXIMIZE THE JURY'S RESPONSIBILITY FOR SENTENCING, AND (3) ANY ERROR DID NOT INJECT AN ARBITRARY FACTOR INTO THE PROCEEDING AND WAS HARMLESS.	13
A. Events at trial	13
B. The evidence of a suicide attempt was sufficiently tied to the impact on Teresa of Appellant's crime, even if the reversal and other personal factors were also mentioned.	15

C. Any contention that the reference to reversal at the same time impermissibly minimized and maximized the jury's sense of responsibility is without merit. 18

D. A normal analysis for harmless error is appropriate here despite this Court's recent opinion in *State v. Burkhart* as to the injection of arbitrary factors. 20

CONCLUSION 24

TABLE OF AUTHORITIES

CASES

Caldwell v. Mississippi, 472 U.S. 320 (1985)	18, 19
Havard v. State, 928 So.2d 771, 792 -793 (Miss. 2006)	22
Ivey, 325 S.C. 137, 481 S.E.2d 125 (1997)	15
Moreno v. State, 38 S.W.2d 774 (Tex. Ct. App. 2001)	16
Payne v. Tennessee, 501 U.S. 808 (1991)	15
People v. Stidham, 533 N.E.2d 957 (Ill. Ct. App. 1989)	16
Riddle v. State, 314 S.C. 1, 443 S.E.2d 557 (1994)	15
State v. Burkhardt, 371 S.C. 482, 640 S.E.2d 450 (2007)	20, 21
State v. Byram 326 S.C. 107, 485 S.E.2d 360 (1997)	16
State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003)	19
State v. Gill, 167 S.W.3d 184, 196 (Mo. 2005)	17, 22
State v. Hughey, 339 S.C. 439, 457, 529 S.E.2d 721,730 - 731 (2000)	15
State v. Rocheville, 310 S.C. 20, 27, 425 S.E.2d 32, 36 (1993)	15-17
State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002)	3
State v. Tyner, 273 S.C. 646, 258 S.E.2d 559 (1979)	18, 19
State v. Young, 196 S.W.3d 85, 111 (Tenn. 2006)	22
U.S. v. McVeigh, 153 F.3d 1166 (10th Cir. 1998)	16

STATUTES

S.C. Code Ann. § 16-3-25(C)(1) (2003)	21
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STATEMENT OF ISSUES ON APPEAL

- I. WAS THERE REVERSIBLE ERROR IN THE BRIEF REFERENCE DURING THE WIDOW'S DESCRIPTION OF A SUICIDE ATTEMPT TO THE PRIOR REVERSAL OF THE SENTENCING PHASE, WHERE: (1) THE SUICIDE ATTEMPT WAS OTHERWISE ADMISSIBLE AND SUFFICIENTLY LINKED TO THE IMPACT OF THE CRIME ON THE WIDOW, (2) THERE WAS NO ATTEMPT TO IMPERMISSIBLY MINIMIZE OR MAXIMIZE THE JURY'S RESPONSIBILITY FOR SENTENCING, AND (3) ANY ERROR DID NOT INJECT AN ARBITRARY FACTOR INTO THE PROCEEDING AND WAS HARMLESS?

STATEMENT OF THE CASE

This case is before this Court on resentencing following reversal of the original death sentence.

A. First trial

During the August 1996 term, the Sumter County Grand Jury indicted Appellant, Bobby Wayne Stone, for murder, first degree burglary, and possession of a weapon during a violent crime (96-GS-43-0698). {R. *}. The state gave notice of intent to seek the death penalty, and served its Notice of Evidence in Aggravation.

The trial judge in the original case was the Honorable R. Markely Dennis, Jr. Appellant was represented at the trial level by Cameron B. Littlejohn, Jr., and James H. Babb; Solicitor Wade S. Kolb prosecuted the original case for the state.

On August 20th, 1996, Judge Dennis granted the defense motion to draw a jury from another county due to pretrial publicity. Jury selection took place in Georgetown County on January 20th through January 22nd, 1997. Trial began before Judge Dennis and a jury on January 23rd, 1997, and on January 26th, 1997, Appellant's jury convicted him of all charges.

Appellant exercised his right to the 24-hour cooling-off period in subsection 16-3-20(B) of the Code of Laws for South Carolina. The sentencing phase of his trial began on January 27th, 1997. Judge Dennis submitted the following aggravating factors to the jury:

- (1) Murder was committed while in the commission of burglary in any degree.
- (2) Murder of a local law enforcement officer during or because of the performance of his official duties.

The following mitigating factors were submitted to the jury:

- (1) The Defendant has no significant history of prior criminal convictions involving the use of violence against another person.
- (2) The murder was committed while the Defendant was under the influence of mental or emotional disturbance.

On January 28th, 1997, Appellant's jury found the existence of both aggravating factors and recommended a sentence of death. Judge Dennis then sentenced Appellant to death for murder, to a consecutive thirty (30) years for first degree burglary, and to five (5) years consecutive to both of the other counts for possession of a weapon.

A timely Notice of Appeal was filed and served on January 31st, 1997. Following briefing and oral argument by both sides, this Court affirmed the guilt phase result but reversed the sentencing phase and remanded for resentencing. State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002).

B. Resentencing

The Honorable Howard P. King handled the resentencing proceeding. Petitioner was again represented by Mr. Babb and Mr. Littlejohn; the case was prosecuted by Solicitor Kelly Jackson and Assistant Solicitor Dudley Saleeby.

Jury selection began in the case on February 22nd, 2005. At the conclusion of the evidentiary hearing, Judge King submitted the following aggravating factors to the jury:

- (1) Murder was committed while in the commission of burglary in any degree.
- (2) Murder of a local law enforcement officer during or because of the performance of his official duties.

{Tr. 759-62}. The following mitigating factors were submitted to the jury:

(1) The murder was committed while the defendant was under the influence of a mental or emotional disturbance.

(2) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired.

(3) The mentality of the defendant at the time of the crime.

(4) Any non-statutory mitigating circumstance.

{Tr. 770-71}.

On February 27th, 2005, the jury found the existence of the aggravator relating to the murder of a law enforcement officer and recommended a sentence of death. **{Tr. 783}.**

The judge so sentenced Appellant. **{Tr. 790}.**

A timely notice of appeal was filed and served. This appeal follows.

STATEMENT OF FACTS

Although the defense requested and received an involuntary manslaughter charge at trial, it is undisputed that Appellant killed Sumter County Sheriff's Deputy Charlie Kubala. The issues in this appeal challenge both the guilt and sentencing phases.

A. 2/26/96: Sgt. Kubala is killed after responding to a 911 call from Ruth Griffith's house.

On the evening of the incident, February 26th, 1996, Ruth Griffith was being visited at her Sumter home by her daughter Mary Ruth McLeod. They heard knocking at the back door, and Ruth pulled the curtain back on the door and saw Appellant. {Tr. 100-01; First Trial Tr. 229-32; 257-58}.

Ruth told her daughter that Bobby Stone was outside and she did not want him in her home. McLeod went outside and accosted Appellant, telling him to go home because they have had trouble before. Appellant initially headed towards a little shed in Griffith's backyard, but after McLeod told him that was not the way home he headed back through the woods. As Appellant walked away, McLeod saw that he had something under the back of his jacket. She walked to the edge of the woods to make sure he was going home, and she saw Appellant standing there, holding a shotgun across his arms, and staring back at the house. McLeod again told Appellant he better go home, and said she was going to call the police. Appellant's eyes were glazed, he walked a little bit off balance, and he was holding what appeared to be a beer can. {Tr. 101-05; 128-30; First Trial Tr. 232; 262-63; 277}.

McLeod went back inside and called 911, and Sergeant Charlie Kubala responded

to Ruth's house. Kubala reported arriving at the scene at 6:06 p.m. McLeod told Kubala what happened, and they walked to the edge of the woods where Appellant had gone. Appellant was nowhere to be seen. Sgt. Kubala told the women to call him if they had any more trouble. **{Tr. 105-07; First Trial Tr. 232-33}**.

Before McLeod left to go see her daughter, she unsuccessfully begged Ruth to leave the house. Evidently Ruth should have listened, because shortly after McLeod left Ruth heard gunshots in her backyard. At 6:47 p.m., she called her neighbor Landrow Taylor, who also had heard the shooting and promptly came over. Taylor called 911 at close to 7:00 p.m. **{Tr. 107-08; First Trial Tr. 232-34; 279-80}**.¹

Ruth and Taylor then heard someone jiggle the door handle to Ruth's car, which was parked right outside her bedroom window. They called 911 again at 7:02 p.m. As the two people cowered in the living room, afraid to go near the windows, they heard someone banging on the rarely-used side door, which led from the washroom onto a small screened-in porch used to store wood. The light on the porch was off, and it was dark. Taylor hollered, "What are you trying to do back there?"; there was a moment of silence but the beating started back. **{First Trial Tr. 234-38; 253-54; 265-71; 281-82}**.

Sergeant Kubala reported arriving back at the scene. Taylor went out onto the front porch and motioned to the deputy, who walked around the corner of the house. Taylor went back inside the house. The dispatcher radioed Kubala about another call, but Kubala radioed that he was busy. **{Tr. 222-24; 244-45; First Trial Tr. 282-84}**.

¹ Ms. Griffith was in poor health and Mr. Taylor was deceased, so their testimony from the first trial was read into the record.

Suddenly, Taylor and Ruth heard someone shout, "Halt!", or "Hold it!", followed immediately by three or four gunshots. As Taylor ran back out onto the front porch, Deputy John Prince came pulling up in his cruiser. Taylor saw a flashlight and walkie-talkie lying on the ground, and yelled at Prince that Kubala was around the side of the house. Meanwhile, Ruth called 911 to report the officer down. **{Tr. 224; First Trial Tr. 240-42; 283-85}.**

Deputy Prince shined a flashlight, saw Kubala, and ran to his side. Kubala was laying face up and bleeding profusely from his mouth and neck. His gun lay near the fingertips of his right hand, and off the fingertips of his right hand was his walkie talkie, from which the radio transmissions were clearly audible. His flashlight lay between his body and his right arm. Deputy Prince rolled Kubala over to clear an airway, but another gunshot rang out and Prince sought cover by the corner of the house. **{Tr. 225-26; 228-30; First Trial Tr. 285-88; 297-99}.**

Other officers and EMS arrived shortly thereafter. Because Prince had heard another shot, the police cleared a nearby shed and the surrounding area. EMS found the victim not breathing and without a pulse. Although he was wearing his protective vest, Sergeant Charles Kubala of the Sumter County Sheriff's Department died at the scene from one gunshot that entered his right ear, and another that entered his neck. **{Tr. 227; 246-47; 342-51}.**

B. 2/26-27/96: Appellant is caught and gives a statement

Officers then began to set up a perimeter to snare the assailant. SLED bloodhound and SWAT teams were called, and off-duty officers from various jurisdictions volunteered

to assist. A SLED helicopter equipped with forward-looking infrared radar and an extremely powerful spotlight called "midnight sun" began searching the woods nearby Ruth's house. After searching for a while, the SLED helicopter located a subject lying prone underneath two fallen trees. The helicopter used the midnight sun to light up the spot. **{Tr. 266-75; 285; 305-06}**.

Meanwhile, police ground teams directed by the helicopter moved in on the suspect. It was extremely slow going through heavy brush. Finally, they neared the suspect, who lay perfectly still on his back. The officers repeatedly ordered the suspect to raise his hands, but he would not comply. Finally, one of the agents put his foot on the suspect's chest while the other officers attempted to take control of the suspect's hands. As the officers began to pull the struggling suspect from his hiding place. Near the suspect's left hip was a .22 pistol. The suspect, who proved to be Appellant, resisted being handcuffed, and officers had to carry him out of the dense woods. **{Tr. 275-80}**.

Appellant was taken to the law enforcement center where he gave a statement. In his statement, Appellant said that he woke up the morning of February 26th and smoked some marijuana. He went to the store and bought some beer, and met a man named David. David offered to sell Appellant three guns, and they agreed to meet on a nearby dirt road.

According to Appellant, David arrived at the meeting place with a .22 pistol and a .410 shotgun. The two men walked around in the woods, drinking beer and target shooting. They agreed on a price of \$100 for both guns. As they walked around, Appellant decided to stop by and say hi to Ruth, whom he described as an old drinking

buddy. David stayed in the woods with the guns.

Appellant claimed that as soon as he entered Ruth's backyard, a woman he did not know came out of the house "raising cane" at him and telling him to get off the property. Appellant returned to the woods, and found and paid David, who left. Appellant then walked around the woods shooting the guns and finishing off the beer. Around dark he decided to return to Ruth's.

Appellant walked up the steps to the little screen porch, set down the shotgun, but kept the .22 in his right hand. He admitted he started beating on the inside door, which broke because he hit it too hard. Appellant then heard a man's voice yelling outside the house, and as he turned, the gun went off. Appellant ran into the woods. In his statement, Appellant claimed the gun only went off once, and he never saw the deputy or his patrol car.

Appellant denied ever firing the gun again after he ran off the porch. He also claimed he did not know what was going on even though he hid in the woods for hours surrounded by police officers with a helicopter overhead. {Tr. 319-28}.

C. Forensic evidence

Police processed the scene and collected various items of evidence confirming that Appellant murdered Sgt. Kubala. The pistol recovered from under Appellant at the time of his arrest was an extremely accurate target pistol which fired powerful .22 "long rifle" ammunition. The weapon was found with five rounds in its clip and a shell casing lodged in the ejection port. SLED conclusively matched this gun to two bullet fragments and one bullet taken from Sgt. Kubala's body. The .22 pistol also matched to three spent .22

cartridge cases found on the side porch as well as other casings found in the nearby woods. Kubala's 9mm service pistol, on the other hand, was found fully loaded and had not been fired. {Tr. 250; 361; 388-91; 434; 440-52}.

Leaning up against the wall of the side porch was a single-shot .410 shotgun, with a live shell inside and its hammer cocked back in the firing position. This shotgun was conclusively matched to a spent .410 shell casing found in the woods near Ruth's house. {Tr. 361; 371; 435-37}.

The screen door to that side porch had three holes which appeared to be from bullets. The screen around these holes not only tested positive for lead but also was microscopically consistent with holes made from bullets SLED test fired through the screen door with Appellant's .22 pistol. Ruth had nailed a board to cover a broken window pane on the door inside the screen porch that leads into the main house itself. After the incident, this board was knocked out and was hanging loosely from only one nail. {Tr. 113-16; 117-19; 268-71; 368-77; 418-25}.

A knife was found in Appellant's coat pocket. Tests taken shortly after arrest indicated gunshot residue on the palm and back of Appellant's right hand, as well as the presence of lead on Appellant's left palm and sleeve. The victim had lead on his right palm; however, this only likely indicated handling of a weapon. The victim's shirt did not have any gunshot residue, which indicates Kubala was not hit by a close range shot. {Tr. 408-11}.

D. Character and victim impact evidence

Appellant's extensive prior record was admitted. In 1985, Appellant was convicted

on seven indictments for breaking into a motor vehicle, larceny, housebreaking, grand larceny, housebreaking, grand larceny, breaking into a motor vehicle, petty larceny, breaking into a motor vehicle, grand larceny, breaking into a motor vehicle, grand larceny, and grand larceny. For all of these crimes he received a youthful offender sentence not to exceed six years, and Appellant was paroled in 1985. **{Tr. 67-78}**.

In 1987, Appellant pled guilty to two counts of 2nd degree burglary and two counts of grand larceny on one indictment, and 2nd degree burglary and grand larceny on another indictment. For these crimes, Appellant received a total active sentence of twenty years plus five years probation. **{Tr. 67-78}**.

Appellant was paroled in June of 1993 after serving approximately five years. The state elicited that he faced substantial time if his parole was revoked. A witness noted that Appellant's conditions of parole and probation precluded him from possessing firearms, using controlled substances, drinking alcohol to excess, or otherwise violating the law. Of course, Appellant violated all of those conditions on February 26th, 1996. **{Tr. 78-82}**.

The state then presented Sgt. Kubala's family members, fellow officers, and friends who universally testified that he was a young, bright, and energetic officer who devoted much time to his community, including the Explorers, the YMCA, and the Special Olympics. Kubala's mother, father, and widow described the trauma of losing Sgt. Kubala, particularly on his widow and children. Particularly moving was testimony from Captain Hobbs and Major Metts, who were close friends with Sgt. Kubala on the force and particularly affected by the loss of their comrade in the line of duty. Captain Hobbs noted that all new recruits are taken to the crime scene and Sgt. Kubala's grave to impress upon them the

seriousness of the job. {Tr. 59-66; 252-59; 464-509; 511-20}.

E. The defense's sentencing phase case

Appellant first called social worker TeAnne Oehler, who described Petitioner's upbringing – in particular the poverty and his mother's affair with the allegedly abusive and drunk Wesley Miles. Oehler theorized this upbringing led to his poor performance and frequent troubles with the law, which began with an arrest for stealing a car. She concluded that these factors about Petitioner's upbringing affected his judgment and decision making. {Tr. 544-67}. On cross, Oehler admitted she believed Petitioner had anti-social personality disorder and a problem with authority figures, and admitted Petitioner's extensive history of burglary and theft. {Tr. 579-83}.

Appellant's paternal aunt Bernice his sister Melinda, and his niece Linda testified about Appellant's parents, his upbringing, and his family, and their relationship with Appellant. {Tr. 584-88; 599-604; 610-18; 619-20}.

Ruth Griffith's sister-in-law Mary Wilson testified at the first trial, and her testimony was read into the record. She stated her daughter Michelle was living with Griffith at some point in the 90s and Appellant would visit her there. She also stated Appellant did some work for Griffith, and some times all of them would go out to a honky tonk. Supposedly, Griffith admitted drinking beer and smoking marijuana with Appellant. {PCR App. 622-30}. On cross, Wilson admitted it was prior 1987 that this occurred. {PCR App. 634}. Wilson's testimony from the first trial's sentencing phase was also read into the record, during which she described Wesley Miles's drinking problem. {PCR App. 635-37}.

Psychopharmacologist Dr. Andrew Morton described the effects of Appellant's

drinking on his brain, and on his judgment and decisionmaking. **{Tr. 638-62}**.

Former warden James Aiken stated that Appellant would easily adapt to prison, despite his commission of some infractions. The defense asked Mr. Aiken to describe what Petitioner's life in prison would be like, at which point he stated that Petitioner would in the company of many dangerous people, and that Petitioner was relatively old and vulnerable to violent and sexually aggressive inmates. Mr. Aiken also was allowed to testify that regardless of whether Petitioner was good in prison or bad in prison, SCDC could safely contained "under the gun" for the rest of his life. **{Tr. 675-89}**.

ARGUMENT

I. THERE WAS NO REVERSIBLE ERROR IN THE BRIEF REFERENCE DURING THE WIDOW'S DESCRIPTION OF A SUICIDE ATTEMPT TO THE PRIOR REVERSAL OF THE SENTENCING PHASE, WHERE: (1) THE SUICIDE ATTEMPT WAS OTHERWISE ADMISSIBLE AND SUFFICIENTLY LINKED TO THE IMPACT OF THE CRIME ON THE WIDOW, (2) THERE WAS NO ATTEMPT TO IMPERMISSIBLY MINIMIZE OR MAXIMIZE THE JURY'S RESPONSIBILITY FOR SENTENCING, AND (3) ANY ERROR DID NOT INJECT AN ARBITRARY FACTOR INTO THE PROCEEDING AND WAS HARMLESS.

Appellant contends that his sentence should be reversed because the victim's widow was allowed to describe her suicide attempt made at some point after the first death sentence was reversed. He contends this at the same time lessened the jury's responsibility by reference to this Court's review, but somehow simultaneously maximized their responsibility by implying that a life sentence could lead to another suicide attempt. However, the evidence of a suicide attempt was sufficiently tied to the impact on Teresa of Appellant's crime, even if the reversal and other personal factors were also mentioned. Moreover, Appellant did not preserve the contention that he makes now, that the reference to reversal at the same time impermissibly minimized and maximized the jury's sense of responsibility. In any event, those contentions are without merit, as that is not how the brief reference was used. Finally, the reference to reversal is not akin to the extensive presentation of conditions of confinement in Burkart such that an arbitrary factor is present. When a harmless error analysis is performed, it is clear this brief and matter-of-fact reference to the prior reversal was not prejudicial to Appellant.

A. Events at trial

Appellant's brief essentially sets forth the entire incident at issue in block quotes, which Respondent will not repeat here. Teresa Kubala of course described her

relationship with the victim, the pain of finding out about his death, and the difficulties of moving on in her life without the victim. She specifically noted the counseling and help she needed to even start dating again, as she thinks of Sgt. Kubala every day and felt like she was cheating on the man she had married at age 19.

Near the end of her testimony, the solicitor asked if there was "anything significant" in her life she would like to tell the jury. She stated that after she and her new husband returned from a family trip to celebrate their first anniversary, she found a message on her machine that "they were going to retry this case over again, that the supreme court had overturned it". She went on to state that her new husband had gotten hurt working at UPS and was dealing with trying to get workers compensation, and they were trying to make two house payments until they could sell one. She said UPS would not take her husband back, so he lost his job and had to find another, "and everything just blew up".

At this point, the defense approached for an off the record conference, after which the solicitor asked Teresa to state what happened as a result of "the things you went through with Charlie and the things after." Teresa then described taking a bottle of Tylenol PMs before her husband woke, but then having second thoughts and telling him what she had done. She then described going to the hospital for treatment and then spending three days in a ward, which led her to realize she did not have as many problems as she thought. At this point the solicitor stopped the questioning and moved on. {Tr. 506-08}.

After the State rested, the defense put its objection on the record. The defense argued that the causation factor for the suicide was not the crime but because the legal proceeding was about to occur again, and asserted that the time that had passed from the

original crime and this resentencing proceeding “lessens the direct effect that she would otherwise be allowed to testify about”. Thus, the defense contended the suicide attempt was extremely prejudicial. The trial court responded that objection was timely, but Teresa’s testimony was at least partially related to Sgt. Kubala’s murder, even though that was not the only thing she mentioned. {Tr. 521-23}.

B. The evidence of a suicide attempt was sufficiently tied to the impact on Teresa of Appellant’s crime, even if the reversal and other personal factors were also mentioned.

As an initial matter, the trial court was correct in admitting the evidence. Of course, victim impact evidence is admissible in the sentencing phase to demonstrate the “uniqueness” of the victim and the specific harm committed by the defendant. State v. Rocheville, 310 S.C. 20, 27, 425 S.E.2d 32, 36 (1993). In Payne v. Tennessee, 501 U.S. 808 (1991), the United States Supreme Court held that victim impact evidence is relevant for a jury to meaningfully assess the defendant’s moral culpability and blameworthiness and is only inadmissible where it is so unduly prejudicial that it renders the trial fundamentally unfair. See State v. Hughey, 339 S.C. 439, 457, 529 S.E.2d 721, 730 - 731 (2000) (setting forth the above discussion).

As the previous discussion notes, victim impact evidence is not just to provide a glimpse of the victim’s life, but also to show the impact of the victim’s death on those left behind. See Hughey, supra (noting the admissibility of testimony that the survivors would miss the victim’s cooking and mothering, and citing: “State v. Ivey, 325 S.C. 137, 481 S.E.2d 125 (1997) (admitting testimony from victim’s mother concerning the impact of her son’s death); Riddle v. State, 314 S.C. 1, 443 S.E.2d 557 (1994) (admitting testimony of

victim's stepdaughter concerning the victim's standing in the community, the victim's grandchildren, and the impact the crime had on her); State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993) (admitting testimony of victim's parents who testified about their families' reliance on their son's dreams and aspirations)"). See also State v. Byram 326 S.C. 107, 485 S.E.2d 360 (1997) ("victim impact evidence which was introduced showed the specific harm committed by appellant in murdering the victim").

Along these lines, undoubtedly a surviving member's suicide attempt or suicidal feelings due to the murder of the loved one is a relevant and admissible part of victim impact evidence in a sentencing phase. See U.S. v. McVeigh, 153 F.3d 1166 (10th Cir. 1998) (Evidence concerning impact of federal building bombing on families of victims, such as fear and hatred suffered by victims' children and suicidal feelings of surviving spouse, was admissible during capital trial's penalty phase.); Moreno v. State, 38 S.W.2d 774 (Tex. Ct. App. 2001) (testimony from victim's grandmother about the suicide of his uncle following the murder was admissible as showing the psychological impact of the crime, and citing other cases admitting psychological effects on survivors following commission of a crime). Indeed, other decisions show that suicidal feelings or depression are often admitted without question in presentencing reports for the judge in the non-capital context. See, e.g. People v. Stidham, 533 N.E.2d 957 (Ill. Ct. App. 1989) (presentence report contained father's observations of his son's depression, loss of sleep and weight, suicidal statements and attempt, and psychiatric hospitalization).

The remaining question is whether the suicide attempt was not admissible based on, as defense counsel phrased it, "causation" – since Teresa mentioned other issues she

faced in relation to her decision to take her own life. However, the trial court was correct in ruling in this case that Teresa's testimony about the event sufficiently tied it in with Appellant's crime.

First, like most issues we humans deal with in our lives, there are often multiple and interrelated factors at work, and simply because other problems leaked into Teresa's heartbreak from this crime does not give Appellant the windfall of making the event inadmissible, since at a minimum it was at least in part based on the chronic loss she faces from losing her first husband. State v. Gill, 167 S.W.3d 184, 196 (Mo. 2005) ("It is not necessary that every piece of victim impact evidence relate to the direct impact of the victim's death on the witness.").

Second, though, part of losing the loved one is not just losing his or her company, it also losing the help, comfort, and aid that the murdered family member provided to the daily life of a household. Cf., e.g. State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993) (admitting testimony of victim's parents who testified about their families' reliance on their son's dreams and aspirations"). Having one's personal and financial life thrown into complete turmoil may not be as important as losing the loved one itself, but it is still an important and relevant impact of the crime on the survivors. Indeed, Teresa had just finished testifying as to how she thought of Sgt. Kubala every day and how she needed counseling to even begin considering a new relationship. Obviously it would be very hard to nurture a new relationship when, as Teresa testified, her mind goes every day to the man to whom she was married at age 19, and for whom she bore two children. The fact is her life had changed greatly in the negative due to Appellant's crime, and *none* of the

present demons she mentioned – new husband, the new husband's job situation, the difficulty of two house payments, and feelings she was “cheating on” Sgt. Kubala with her new relationship – would have existed had Appellant not taken the victim's life. The fact that Teresa's life had changed in many respects was a consequence of the crime, and thus was admissible victim impact.

Moreover, and putting aside for the moment any issue as to the mention of the prior reversal in an of itself, when one reads Teresa's testimony in its entirety, it is clear that while the reversal might have been a trigger point, it was the daily anguish of living without Sgt. Kubala that was ultimately part of Teresa's fateful decision – not the mere possibility of resentencing in a vacuum. For example, she had testified that she moved away from Sumter to stop going to the victim's gravesite every day, which was negatively affected her children. {Tr. 505-06}. Indeed, given that this sentencing phase was tried so far removed from the original crime, it was relevant for the State to show that this murder had a continuing impact on the survivors that had not eased with the passage of time.

The judge was correct that the evidence was sufficiently tied to the impact of this crime on the survivors for it to be admissible.

C. Any contention that the reference to reversal at the same time impermissibly minimized and maximized the jury's sense of responsibility is without merit.

Undoubtedly, then, the attempted suicide was admissible on its own – the remaining question is whether there was any reversible error from the mention in discussing that otherwise admissible suicide attempt of this Court's reversal of the first sentencing phase. In his brief, Appellant contends there was for two reasons: (1) that the mention of this

Court's review lessened the jury's sense of responsibility for sentencing, *ala State v. Tyner*, 273 S.C. 646, 258 S.E.2d 559 (1979) and *Caldwell v. Mississippi*, 472 U.S. 320 (1985), and (2) that the mention of this impermissibly maximized the jury's sense of responsibility inasmuch as it implied a life sentence would trigger another attempt.

As an initial matter, both of these contentions are not preserved. The only argument made at trial, addressed in the preceding ground, was one of "causation" – that she tried suicide because of the approaching legal proceeding, not the murder, and that the "period from 1996 to 2003 certainly lessens the direct effect" of the crime upon Teresa. {Tr. 522}. Appellant at trial made no mention of *Caldwell*, or impermissibly lessening or maximizing the jury's sense of responsibility. Since Appellant did not make the same argument at trial that he makes now, the issue is not preserved. See *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal.").

Regardless, Appellant's contentions are without merit. First, this is simply not a *Caldwell* issue, where there was extensive argument that the responsibility for determining the appropriateness of the sentence rested with someone other than the jurors. 472 U.S. 320. Likewise, in *Tyner* there was an extensive explanation of everyone from the trial judge to the United States Supreme Court who would "determine whether your recommendation was right or not". *Tyner*, 273 S.C. at 659, 258 S.E.2d at 566. No such argument was made; here, there was merely a matter-of-fact mention of a retrial that was a necessary predicate fact to otherwise admissible victim impact evidence. There was no harping on this predicate fact, and no implication that the jury was not completely

responsible for sentencing. Indeed, the trial court expressly charged them that they were completely responsible for the “final decision”, and unlike those cases, no one told them different. {Tr. 41}.

Appellant also cannot succeed with his contention that the mention of the reversal impermissibly maximized the jury’s responsibility by perhaps suggesting that Teresa would try suicide again if the jury returned a life sentence. First, Appellant has a bit of a logical problem with his argument, in that he asserts in the same sentence that the mention of the reversal both minimized *and* maximized the jury’s responsibility. Regardless, no one said that at all – there was no argument along those lines, simply a brief matter-of-fact mention of a predicate fact. Indeed, as noted before suicides are generally admissible victim impact evidence, and any suicide attempt might carry the inference that any sort of victory for the defense might trigger another attempt. The same could be said for other psychological problems suffered by a survivor, but that concern does not mean the defendant gets to escape having the jury hear the actual impact of what he has done on those who have suffered.

Neither of Appellant’s concerns are sufficient to mandate reversal given the circumstances of this case.

D. A normal analysis for harmless error is appropriate here despite this Court’s recent opinion in *State v. Burkhardt* as to the injection of arbitrary factors.

Finally, even if there was error, it was not prejudicial. First, though, Appellant in his brief asserts there need be no determination of prejudice from the alleged evidentiary error in this case, inasmuch as he questions “whether harmfulness is even required for errors

of this type”. Appellant relies of course on this Court’s recent opinion in State v. Burkhart, 371 S.C. 482, 640 S.E.2d 450 (2007), in which a sentencing phase was reversed due to the State’s introduction of evidence concerning conditions of confinement in prison. The majority opinion in Burkhart held:

Although appellant attempted to counter the testimony of the State's witness with evidence regarding the harshness of prison life, *this entire subject matter* injected an arbitrary factor into the jury's sentencing considerations. A capital jury may not impose a death sentence under the influence of any arbitrary factor. S.C. Code Ann. § 16-3-25(C)(1) (2003). When the jury is invited to speculate about irrelevant matters upon which a death sentence may be based, § 16-3-25(C)(1) is violated.

State v. Burkhart, 371 S.C. 482, 488-489, 640 S.E.2d 450, 453 (S.C. 2007) (emphasis added). The concurrence expressly contended that the court should not apply the normal harmless error standard for constitutional violations to this issue, concluding that “once improper evidence of any kind injects an arbitrary factor into the jury’s consideration, [the] Court cannot uphold the death sentence under § 16-3-25(C)(1)”. Burkhart, 640 S.E.2d at 454.²

Respectfully, the State would contend that Burkhart does not stand for the proposition that any error in the admission of evidence necessarily results in reversal. Burkhart only reversed without a prejudice analysis because there was extensive evidence presented on a class of evidence – an “entire subject matter” – that was off limits. Here, at worst we have victim impact evidence that may have gone too far. As opposed to

² The State would respectfully hold to its position that the dissenters in Burkhart were correct, and the standards set forth in § 16-3-25(C)(1) were merely a codification of Eighth Amendment concerns necessary for constitutional passage of a death penalty statute following the United States Supreme Court’s striking down of all death penalty statutes in the 1970s.

conditions of confinement, victim impact evidence is a class of evidence that is otherwise admissible; thus a normal prejudice analysis is appropriate.

Further, a mere brief reference to trying the case over again does not inject an “entire subject matter” of irrelevant evidence into the case akin to Burkhart. In Burkhart, there was extensive testimony and argument on the issue, and conditions of confinement became a central focal point of the sentencing proceeding. That simply did not happen here, where there was a brief matter-of-fact mention of a predicate fact and no further argument or other discussion of the reversal. Such a minor reference can not have risen to the injection of a whole class of improper evidence and considerations such that an arbitrary factor is present.

E. There was no prejudice.

Finally, if a harmless error analysis is applied, there was no reversible error. Appellant committed an extremely aggravated crime in ambushing a police officer, and he has an extensive criminal history – including an then-active parole that provided ample evidence of motive. The victim impact evidence was especially moving without regard to Teresa’s testimony as to the suicide attempt, from the close friends of Sgt. Kubala’s responding to the scene, or helping with the family after the crime, to the discussion of one officer taking Sgt. Kubala’s young son to the scene to explain to him why his brave daddy was gone. As repeatedly noted before, the mention of reversal was made briefly and matter-of-factly and then no further mention was made again in either argument or testimony. Under these circumstance, these two lines of text in this 800-page sentencing hearing could not have been prejudicial. See, e.g. Havard v. State, 928 So.2d 771, 792

-793 (Miss. 2006) (Payne recognizes it is unlikely a brief statement in victim impact testimony could inflame the jury beyond the facts of the case so as to make the proceeding fundamentally unfair); State v. Young, 196 S.W.3d 85, 111 (Tenn. 2006) (no prejudice from improper victim impact testimony where trial court instructed jury how to consider the evidence, and the prosecution did not rely on or stress the offending testimony in closing argument). See also State v. Gill 167 S.W.3d 184, 196 (Mo. 2005) (defendant did not show that the emotion displayed by the witnesses was unduly prejudicial).

Any error did not affect this sentencing result.

CONCLUSION

For the foregoing reasons, this Court should affirm Appellant's sentence.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

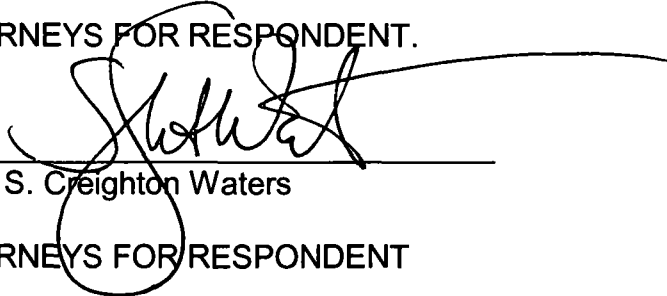
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ATTORNEYS FOR RESPONDENT.

BY: 

S. Creighton Waters

ATTORNEYS FOR RESPONDENT

June 18, 2007

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Sumter County
Howard P. King, Circuit Court Judge

THE STATE,

Respondent,

v.

BOBBY WAYNE STONE,

Appellant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondent has no additions to the matter designated by Appellant.

The undersigned hereby certifies this Designation contains no matter which is
irrelevant to this appeal.

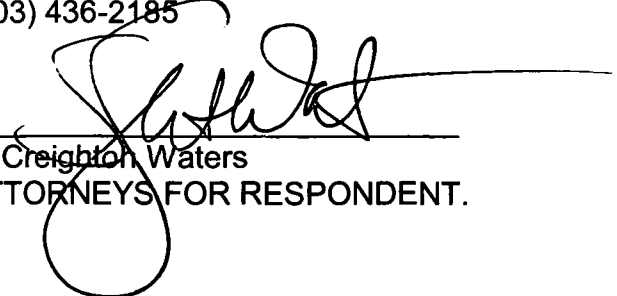
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S. Creighton Waters
ATTORNEYS FOR RESPONDENT.

June 18, 2007

**STATE OF SOUTH CAROLINA
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Howard P. King, Circuit Court Judge

THE STATE,

Respondent,

v.

BOBBY WAYNE STONE,

Appellant.

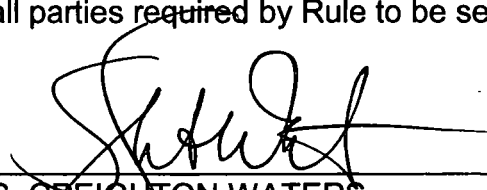
PROOF OF SERVICE

I, S. Creighton Waters, Counsel for Respondent, certify that I have this date served the ***Initial Brief of Respondent and Designation of Matter***, both dated June 18, 2007, on Appellant by depositing two copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

Joseph L. Savitz, III, Chief Attorney
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office 11589
Columbia, South Carolina 29211-1589

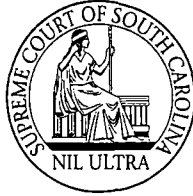
I further certify that I have served all parties required by Rule to be served.

This 18th day of June, 2007.



S. CREIGHTON WATERS
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

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June 12, 2007

Assistant Attorney General S. Creighton Waters
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Stone, Bobby Wayne

Dear Counsel:

The following Order has been endorsed on your Motion to Extend Time for Filing Initial Brief of Respondent and Designation of Matter in the above entitled case on appeal.

“Granted.

Jean H. Toal C.J.
For the Court

By s/ Daniel E. Shearouse
Clerk

June 12, 2007.”

Please be advised that the Initial Brief of Respondent and Designation of Matter should be served and filed on or before June 18, 2007.

Assistant Attorney General S. Creighton Waters
Page Two
June 12, 2007

Very truly yours,

A handwritten signature in black ink, appearing to be the letters "DES" followed by a long, sweeping horizontal line that extends to the right.

CLERK

DES/dmh

cc: Chief Attorney Joseph L. Savitz, III



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED

JUN 11 2007

June 11, 2007

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

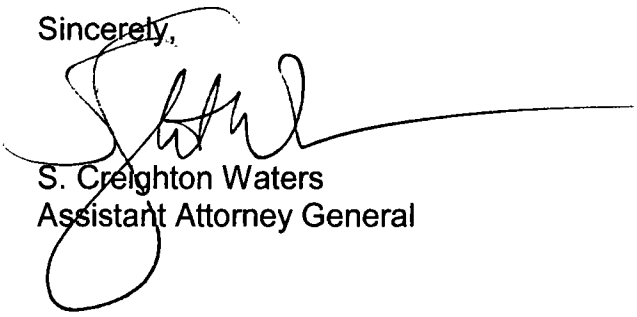
Re: The State v. Bobby Wayne Stone
Appeal from Sumter County

Dear Mr. Shearouse:

Please find enclosed a Motion for Extension of Time regarding the above-captioned matter. The initial brief of respondent is due to be filed and served today, June 11, 2007. Due to my heavy caseload, I will not be able to complete this initial brief in a timely fashion.

Thank you for your consideration.

Sincerely,



S. Creighton Waters
Assistant Attorney General

SCW/ap

cc: Joseph L. Savitz, III, Esquire

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Sumter County
Howard P. King, Circuit Court Judge

RECEIVED

JUN 11 2007

S.C. SUPREME COURT

THE STATE,

Respondent,

v.

BOBBY WAYNE STONE,

Appellant.

**MOTION TO EXTEND TIME FOR
FILING INITIAL BRIEF OF RESPONDENT
AND DESIGNATION OF MATTER**

The Respondent, above-named, hereby makes a motion to this Court to extend the time for filing the Initial Brief of Respondent and Designation of Matter from June 11, 2007, 2007, for a period of seven (7) days up to and including June 18, 2007. The Respondent had made an initial request on March 12, 2007, which this Court granted on March 13, 2007 and a second request on April 11, 2007, which this Court granted on April 12, 2007. Respondent made a third request on May 11, 2007, which this Court granted also.

This is a death penalty case. The request is due to the length of the record on appeal, and the complexity of the issues currently raised before this Court. Respondent has been involved in numerous litigations in both state and federal court during this time period which has prevented the completion of this brief in a sufficient and timely manner. For example, counsel also has a pleading due in federal court today on a murder case.

Moreover, counsel had every intention of finishing the brief by this evening, but another concern arose this morning that reduced available time to work on this case. Because of this, counsel is only requesting an additional week to complete the brief.

Respondent's counsel are cognizant of this Court's policy on extensions in capital cases and will do all to ensure that no further extensions are requested. As indicated by his signature below, counsel for Appellant consents to this request.

Wherefore Respondent respectfully requests an extension of a period of time of seven (7) days up to and including June 18, 2007 to complete this brief.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

S. CREIGHTON WATERS
Assistant Attorney General

ATTORNEYS FOR RESPONDENT

BY: _____

S. Creighton Waters
S. Creighton Waters

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

June 11, 2007

I CONSENT:

LaFelle C. Du Kent Sr.
Joseph Savitts III

GRANTED.

For the Court
By *[Signature]*
Clerk
June 12, 2007

Joseph L. Savitz, III

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Sumter County
Howard P. King, Circuit Court Judge

THE STATE,

Respondent,

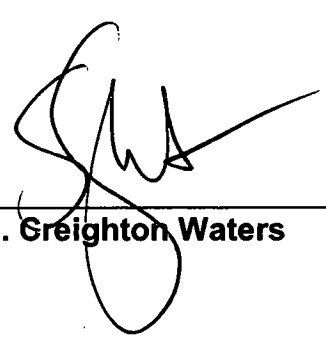
v.

BOBBY WAYNE STONE,

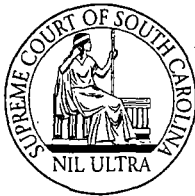
Appellant.

CERTIFICATE OF SERVICE

I, S. Creighton Waters, hereby certify that I have served Respondents ***Motion to Enlarge Time for Filing Initial Brief of Respondent*** on Joseph L. Savitz, III, Esquire, South Carolina Office of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, South Carolina 29211 by depositing a copy in the United States Mail, postage prepaid this 11th day of June, 2007.



S. Creighton Waters



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
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May 15, 2007

Assistant Attorney General S. Creighton Waters
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: The State v. Stone, Bobby Wayne

Dear Counsel:

The following Order has been endorsed on your Motion for Extension of Time in the above entitled case on appeal.

"Granted.

Jean H. Toal C.J.
For the Court

By s/ Daniel E. Shearouse
Clerk

May 15, 2007."

Please be advised that the Initial Brief of Respondent and Designation of Matter should be served and filed on or before June 11, 2007.

Very truly yours,


CLERK

DES/dmh

Assistant Attorney General S. Creighton Waters
Page Two
May 15, 2007

cc: Chief Attorney Joseph L. Savitz, III



HENRY McMASTER
ATTORNEY GENERAL

May 11, 2007

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MAY 11 2007
S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
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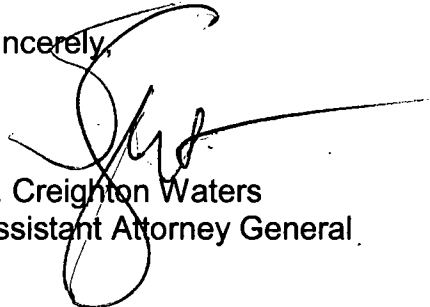
Re: The State v. Bobby Wayne Stone
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Thank you for your consideration.

Sincerely,



S. Creighton Waters
Assistant Attorney General

SCW/ap

cc: Joseph L. Savitz, III, Esquire

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Sumter County
Howard P. King, Circuit Court Judge

THE STATE,

Respondent,

v.

BOBBY WAYNE STONE,

Appellant.

RECEIVED

MAY 11 2007

S.C. SUPREME COURT

**MOTION TO EXTEND TIME FOR
FILING INITIAL BRIEF OF RESPONDENT
AND DESIGNATION OF MATTER**

The Respondent, above-named, hereby makes a motion to this Court to extend the time for filing the Initial Brief of Respondent and Designation of Matter from May 11, 2007, 2007, for a period of thirty (30) days up to and including June 11, 2007. The Respondent had made an initial request on March 12, 2007, which this Court granted on March 13, 2007 and a second request on April 11, 2007, which this Court granted also.

This is a death penalty case. The request is due to the length of the record on appeal, and the complexity of the issues currently raised before this Court. Respondent has been involved in numerous litigations in both state and federal court during this time period which has prevented the completion of this brief in a sufficient and timely manner. Counsel for Respondent will also be out of the office on the day this brief is due.

Respondent's counsel are cognizant of this Court's policy on extensions in capital

cases and will do all to ensure that no further extensions are requested. As indicated by his signature below, counsel for Appellant consents to this request.

Wherefore Respondent respectfully requests an extension of a period of time of thirty (30) day up to and including June 11, 2007 to complete this brief.

Respectfully submitted,

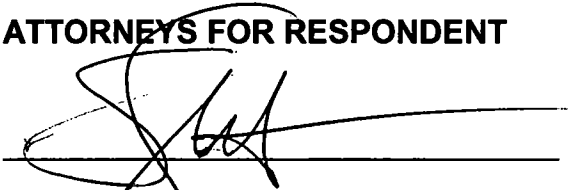
CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
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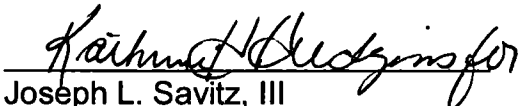
ATTORNEYS FOR RESPONDENT

BY: 

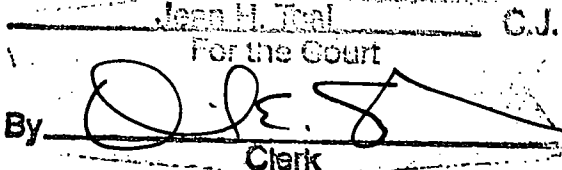
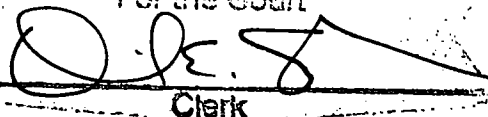
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

May 11, 2007

I CONSENT:


Joseph L. Savitz, III

GRANTED.


Jean H. Neal C.J.
For the Court
By 
Clerk

May 15, 2007

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Sumter County
Howard P. King, Circuit Court Judge

THE STATE,

Respondent,

v.

BOBBY WAYNE STONE,

Appellant.

CERTIFICATE OF SERVICE

I, Amy Proveaux, hereby certify that I have served Respondents ***Motion to Enlarge Time for Filing Initial Brief of Respondent*** on Joseph L. Savitz, III, Esquire, South Carolina Office of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, South Carolina 29211 by depositing a copy in the United States Mail, postage prepaid this 11th day of May, 2007.



Amy Proveaux
Legal Assistant

The Supreme Court of South Carolina

The State,

Respondent

v.

Bobby Wayne Stone,

Appellant.

The Honorable Howard P. King
Sumter County
Trial Court Case No. 1996-GS-43-00698

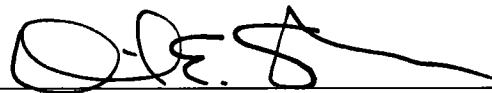
ORDER

For good cause having been shown, the time for serving and filing the Initial Brief of Respondent and Designation of Matter in the above entitled matter is hereby extended until May 11, 2007.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

April 12, 2007

cc: Chief Attorney Joseph L. Savitz, III
Assistant Attorney General S. Creighton Waters



HENRY McMASTER
ATTORNEY GENERAL

RECEIVED

APR 11 2007

April 11, 2007

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: The State v. Bobby Wayne Stone
Appeal from Sumter County

Dear Mr. Shearouse:

Please find enclosed a Motion for Extension of Time regarding the above-captioned matter. The initial brief of respondent is due to be filed and served today, April 11, 2007. Due to my heavy caseload, I will not be able to complete this initial brief in a timely fashion.

Thank you for your consideration.

Sincerely,

S. Creighton Waters
Assistant Attorney General

/hfb

cc: Joseph L. Savitz, III, Esquire

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Sumter County
Howard P. King, Circuit Court Judge

RECEIVED

APR 11 2007

S.C. SUPREME COURT

THE STATE,

Respondent,

v.

BOBBY WAYNE STONE,

Appellant.

**MOTION TO EXTEND TIME FOR
FILING INITIAL BRIEF OF RESPONDENT
AND DESIGNATION OF MATTER**

The Respondent, above-named, hereby makes a motion to this Court to extend the time for filing the Initial Brief of Respondent and Designation of Matter from April 11, 2007, for a period of thirty (30) days up to and including May 11, 2007. The Respondent had made an initial request on March 12, 2007, which this Court granted on March 13, 2007.

This is a death penalty case. The request is due to the length of the record on appeal, and the complexity of the issues currently raised before this Court. Respondent has been involved in numerous litigations in both state and federal court during this time period which has prevented the completion of this brief in a sufficient and timely manner.

Wherefore Respondent respectfully requests an extension of a period of time of thirty (30) day up to and including May 11, 2007 to complete this brief.

Respectfully submitted,

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

S. CREIGHTON WATERS
Assistant Attorney General

ATTORNEYS FOR RESPONDENT

BY: 

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

April 11, 2007

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Sumter County
Howard P. King, Circuit Court Judge

THE STATE,

Respondent,

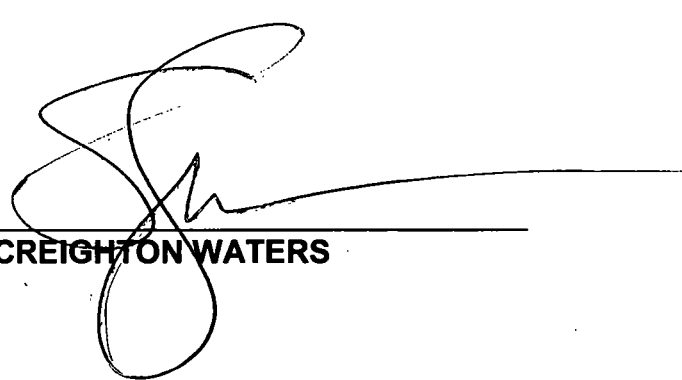
v.

BOBBY WAYNE STONE,

Appellant.

CERTIFICATE OF SERVICE

I, S. Creighton Waters, hereby certify that I have served Respondents ***Motion to Enlarge Time for Filing Initial Brief of Respondent*** on Joseph L. Savitz, III, Esquire, South Carolina Office of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, South Carolina 29211 by depositing a copy in the United States Mail, postage prepaid this 11th day of April, 2007.



S. CREIGHTON WATERS

The Supreme Court of South Carolina

The State,

Respondent

v.

Bobby Wayne Stone,

Appellant.

The Honorable Howard P. King
Sumter County
Trial Court Case No. 1996-GS-43-00698

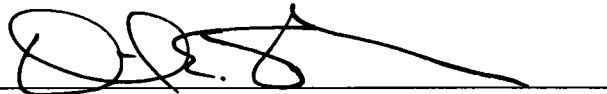
ORDER

For good cause having been shown, the time for serving and filing the Initial Brief of Respondent and Designation of Matter in the above entitled matter is hereby extended until April 11, 2007.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

March 13, 2007

cc: Chief Attorney Joseph L. Savitz, III
Assistant Attorney General S. Creighton Waters



HENRY McMASTER
ATTORNEY GENERAL

March 12, 2007

RECEIVED

MAR 12 2007

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

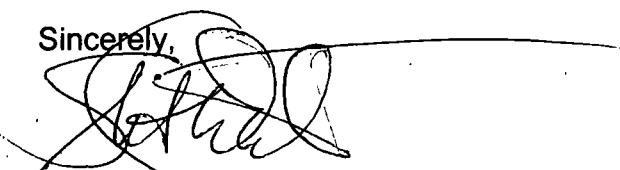
Re: The State v. Bobby Wayne Stone
Appeal from Sumter County

Dear Mr. Shearouse:

The initial brief of respondent in the above-entitled action is due to be filed and served today, March 12, 2007. Due to my heavy caseload, I will not be able to complete this initial brief in a timely fashion. For this reason, I respectfully request an extension of thirty (30) days in which to file the initial brief.

By copy of this letter I am informing opposing counsel, Joseph L. Savitz, III, of this request. Thank you for your consideration.

Sincerely,



S. Creighton Waters
Assistant Attorney General

/hfb

cc: Joseph L. Savitz, III, Esquire



HENRY McMASTER
ATTORNEY GENERAL

February 12, 2007

RECEIVED

FEB 12 2007

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

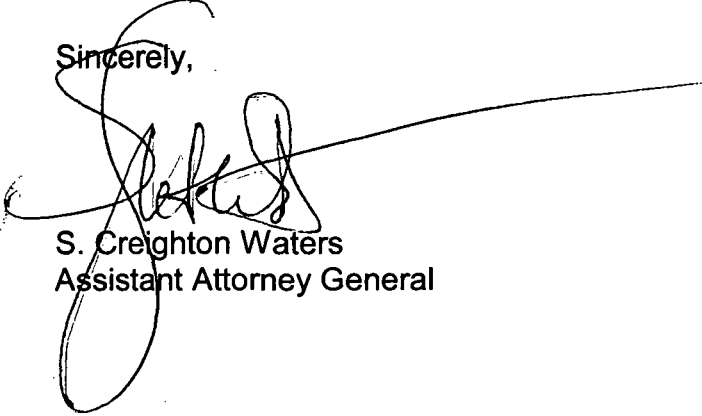
Re: The State v. Bobby Wayne Stone
Appeal from Sumter County

Dear Mr. Shearouse:

Assistant Deputy Attorney General Donald J. Zelenka has assigned this direct appeal to me for handling. Please enter my appearance as counsel of record, and direct all future correspondence and orders concerning this case to my attention.

Thank you for your attention to this matter. By copy of this letter to Joseph L. Savitz, III, Esquire, I am notifying him of my appearance in this case.

Sincerely,


S. Creighton Waters
Assistant Attorney General

/lb

cc: Joseph L. Savitz, III, Esquire
Sandi Wofford, Victims' Services

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JAN 25 2007

Appeal from Sumter County

S.C. SUPREME COURT

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY WAYNE STONE,

APPELLANT

INITIAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Chief Attorney

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	8

TABLE OF AUTHORITIES

Cases

<i>North Carolina v. Pearce</i> , 395 U.S. 711 (1969)	11
<i>Patrick v. State</i> , 249 S.C. 203, 562 S.E.2d 609 (2002)	11
<i>State v. Brown</i> , 289 S.C. 581, 347 S.E.2d 882 (1986)	11
<i>State v. Burkhardt</i> , S.C. Sup. Ct. Opinion No. 26243, decided January 8, 2007	10, 12, 13
<i>State v. Crisp</i> , 362 S.C. 412, 608 S.E.2d 429 (2005)	10
<i>State v. George</i> , 323 S.C. 496, 476 S.E.2d 903 (1996)	10
<i>State v. Gilbert</i> , 273 S.C. 690, 258 S.E.2d 890 (1979)	10
<i>State v. McClure</i> , 342 S.C. 403, 537 S.E.2d 273 (2000)	12
<i>State v. Owens</i> , 362 S.C. 175, 607 S.E.2d 78 (2004)	10
<i>State v. Plath [Plath I]</i> , 277 S.C. 126, 284 S.E.2d 221 (1981)	10, 11
<i>State v. Plath [Plath II]</i> , 281 S.C. 1, 313 S.E.2d 619 (1984)	12
<i>State v. Sloan</i> , 278 S.C. 435, 298 S.E.2d 92 (1982)	11
<i>State v. Stone</i> , 350 S.C. 442, 567 S.E.2d 244 (2002)	4
<i>State v. Tyner</i> , 273 S.C. 646, 258 S.E.2d 559 (1979)	10
<i>State v. Woomer [Woomer I]</i> , 276 S.C. 258, 277 S.E.2d 696 (1981)	11
<i>State v. Woomer [Woomer II]</i> , 277 S.C. 170, 284 S.E.2d 357 (1981)	11

Statutes

<i>S.C. Code Section 16-3-20</i>	3
<i>S.C. Code Section 16-3-25</i>	7, 9, 13

Constitutional Provisions

<i>United States Constitution, Fourteenth Amendment</i>	11
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STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by permitting the victim's widow to testify that she had attempted suicide when she learned – from a message left on her answering machine – that the Supreme Court had reversed Stone's death sentence and "they were going to retry this case over again," as this testimony introduced an arbitrary factor into Stone's resentencing, in violation of *S.C. Code Section 16-3-25(C)(1)*.

STATEMENT OF THE CASE

In June 1996, a Sumter County grand jury indicted Bobby Wayne Stone for murder (victim: Sumter Police Sergeant Charles Kubala), first degree burglary (victim: Ruth Griffith) and possession of a firearm during the commission of a violent crime. The State sought the death penalty, relying on two aggravators:

S.C. Code Section 16-3-20(C)(a)(7): The murder of a law enforcement officer, and

Section 16-3-20(C)(a)(1)(c): The murder was committed while in the commission of burglary.

The incident occurred the evening of February 26, 1996. The State's theory of the case has always been that Stone intentionally shot Kubala twice as the officer responded to a possible burglary in progress at Griffith's house. Upon his arrest, Stone told the police that he had been drinking that day and shot Kubala accidentally when he was startled by the officer while knocking on Griffith's door. He has never testified or made a statement to the jury.

Judge R. Markley Dennis presided at Stone's initial trial in January 1997. In addition to murder, he charged the jury on involuntary manslaughter, but they found Stone guilty as charged.

At sentencing, the judge submitted two mitigators:

S.C. Code Section 16-3-20(C)(b)(1): The defendant has no significant history of prior criminal conviction involving the use of violence against another person, and

Section 16-3-20(C)(b)(2): The murder was committed while the defendant was under the influence of mental or emotional disturbance.

The jury found both aggravators advanced by the State and the judge sentenced Stone to death.

On direct appeal, Stone raised seven issues (three guilt phase, four sentencing phase), which included the following sentencing issues:

1. The judge erred by excusing a juror during the sentencing phase at the Solicitor's request, simply because she had been casually acquainted with Stone's aunt, who was testifying for the defense, some five or six years earlier.
2. The judge erred by refusing to charge the statutory mitigators provided by *S.C. Code Section 16-3-20(C)(b)(6)* and (7) where there was overwhelming evidence that Stone was intoxicated when he shot Sergeant Kubala.
3. The judge erred by allowing the State to argue parole and future dangerousness but then refusing to instruct the jury that a life sentence for Stone in fact meant life without parole.

The Supreme Court reversed on all three and remanded for resentencing. *State v. Stone*, 350 S.C. 442, 567 S.E.2d 244 (2002).

On February 22 through 27, 2005, Judge Howard P. King presided at Stone's jury resentencing. The State's evidence remained substantially unchanged from the first trial with one exception, which forms the basis of this appeal. The basic facts, as summarized by the Court in its earlier opinion, are:

Shortly before 7:00 p.m. on February 26, 1996, Ruth Griffith heard gunshots in her backyard. She called her next door neighbor, Landrow Taylor, who came over; the two called 911. As they waited in the living room, Griffith and Taylor heard someone come onto the screened porch on the side of the house and start banging on the door to the house. A wooden board which had been nailed over a broken window pane on

the lower right-hand corner of the door broke out. Sumter police officer, Sergeant Charles Kubala arrived at 7:07 p.m.; he was motioned to the side of the house by Taylor. As Taylor and Griffith waited inside the house, they heard someone shout "Halt" or "Hold it," followed immediately by three or four gunshots. A second police officer arrived to find Kubala had been shot in the right ear and neck. Kubala died at the scene.

After four hours of searching the wooded area behind Griffith's home, Stone was found lying beneath two fallen trees, with a .22 caliber pistol under him. A shotgun had been left on the screen porch. Stone confessed to the shooting, but claimed he had drank about twelve beers in the six hours prior to the shooting. He told police that when he heard a man's voice yelling at him from outside the screened porch, he turned and the gun went off, so he ran. The jury convicted Stone of murder, first degree burglary, and possession of a firearm during commission of a violent crime.

567 S.E.2d at 244-5.

The State again relied upon the same two aggravators:

S.C. Code Section 16-3-20(C)(a)(7): The murder of a law enforcement officer, and

Section 16-3-20(C)(a)(1)(c): The murder was committed while in the commission of burglary.

The judge also submitted the following three mitigators:

S.C. Code Section 16-3-20(C)(b)(2): The murder was committed while the defendant was under the influence of mental or emotional disturbance,

Section 16-3-20(C)(b)(6): The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired, and

Section 16-3-20(C)(b)(7): The age or mentality of the defendant at the time of the crime.

(For some reason, defense counsel did not request – and the trial judge omitted – the “no significant history of prior criminal conviction involving the use of violence against another person” mitigator, *Section 16-3-20(C)(b)(1)*, which was given at Stone’s first sentencing phase.) The jury found the “murder of the law enforcement officer” aggravator, *Section 16-3-20(C)(a)(7)*, but not the burglary aggravator, *Section 16-3-20(C)(a)(1)(c)*, and recommended that Stone be put to death. The judge affirmed their decision and sentenced Stone accordingly.

This appeal consolidates Stone’s direct appeal with the mandatory review provisions of *S.C. Code Section 16-3-25*.

ARGUMENT

The trial judge committed reversible error by permitting the victim's widow to testify that she had attempted suicide when she learned – from a message left on her answering machine – that the Supreme Court had reversed Stone's death sentence and "they were going to retry this case over again," as this testimony introduced an arbitrary factor into Stone's resentencing, in violation of S.C. Code Section 16-3-25(C)(1).

Sergeant Kubala died in 1996. His widow, Teresa, moved to Anderson after Stone's 1997 trial and remarried in 2001. Tr. p. 504, line 23 – p. 506, line 16. The Court reversed Stone's death sentence July 15, 2002.

After Teresa told the jury about her remarriage, the Solicitor asked, "And since then, is there anything significant in your life that you'd like to tell the jury about?" Tr. p. 506, lines 17 and 18. She responded:

Yes. I'm ashamed of it, but I'll tell them. February 11, 2003, I woke up very depressed. They had called and told me that they were going to retry this case over again, that the Supreme Court had overturned it, and they called. They ended up having to, leaving a message. We had gone away. It was our first anniversary ... and we had gone and taken the kids to the beach, and when we got back on that first anniversary, that was on my answering machine, and so I had that to deal with, and my husband, Mike, now he was working for UPS and got hurt on the job, and he was going through Workmen's Comp and stuff, and we were trying to sell his house because we had two house payments when we got married, and the UPS wouldn't take, take him back, so he lost his job and had to find another job, and everything just blew up. So, that morning I got up and Mike was still asleep.

Tr. p. 506, line 19 – p. 507, line 12. At this point defense counsel objected. Tr. p. 507, lines 13-15. After a bench conference, the judge overruled the objection and noted, “I will allow the defense to put the matters on the record at a later time.” Tr. p. 507, lines 16-18.

The Solicitor’s direct examination of Teresa continued:

Q. Teresa, let me just ask you, ask you directly, the things that you went through with Charlie [Kubala] and the things after, if you’ll go ahead and tell us, as a result of all that, what happened that particular day?

A. I decided I couldn’t take any more, so I took the bottle of Tylenol PM and decided I was just going to end my life. Well, after I’d taken them, my thoughts said, “What am I doing?” This was stupid. I’ve got two kids and a husband, so Mike woke up by this time, and I told him what I had done, and of course he got angry with me for doing it, which I don’t blame him, because it was stupid. I was, they took me to the hospital, and of course they had to, to put me in ICU. I couldn’t tell you what went on, because I blacked out after I got to the hospital. They said I was up, but I didn’t know what I was doing or saying, but they had to, I had to drink this stuff to get it all out of my stomach, or they were going to pump my stomach. After that, I put myself into going to, they have a unit there for people that have done that kind of stuff, so I went up there, signed myself in, and I stayed there for about three days, which was an eye-opener. I saw I don’t have as many problems as I thought I did, as other people do. You always find people that are in worse shape than you are, but ...

Tr. p. 507, line 19 – p. 508, line 20. The Solicitor asked three more questions and concluded his examination. Tr. p. 508, line 21 – p. 509, line 7. Defense counsel asked no questions of this witness. Tr. p. 509, lines 8-10.

The judge subsequently heard counsel's objection to the testimony. Tr. p.

521, lines 19-21. Counsel stated:

[D]uring the testimony of [the victim's widow], we asked to approach the bench prior to a certain portion of her testimony, and the court allowed her to testify about an attempted suicide that she experienced in, I believe, the year 2003. ... [W]e objected to that. It was apparent from her testimony that the causation factor there was not what had happened seven years earlier, but the fact that the legal proceeding was about to occur again. ... [T]he fact that she was able to testify about this attempted suicide was extremely prejudicial to the defendant and that testimony should have been excluded.

Tr. p. 521, line 22 – p. 522, line 15. The judge then explained his reason for overruling the objection:

[Y]our objection was timely made, and I did overrule the objection. In my view, it was partially related to the situation of Mr. Kubala, Sergeant Kubala, and I think he is appropriately the victim in fact of testimony [sic]. Granted, it was not the only thing, but I think ... that she did relate it to her relationship with her husband as a part of what led up to that particular suicide, and so I think that it was relevant, and for that reason I did overrule it, but your objection is noted.

Tr. p. 522, line 16 – p. 523, line 2.

The admission of this testimony was reversible error, as it introduced an arbitrary factor into the jury's sentencing deliberations, in violation of *S.C. Code Section 16-3-25(C)(1)*. Essentially, Sergeant Kubala's widow testified that she tried to kill herself when she learned this Court had reversed Stone's initial death sentence and that he would have to be resentenced – the very proceeding in which the jury

was then participating. The various implications of this testimony for the jury will be addressed shortly. But first, here is the relevant law.

The Court has scrupulously ensured that the mechanisms of the criminal justice system do not themselves become factors in capital sentencing, regardless of whether the proponent is the Solicitor, defense counsel or even the trial judge. In *State v. Burkhardt*, S.C. Sup. Ct. Opinion No. 26243, decided January 8, 2007, the Court reversed a death sentence where the State introduced evidence about prison life in general. Similarly, it has disallowed defense evidence illustrating the methods of execution, *State v. Plath [Plath I]*, 277 S.C. 126, 284 S.E.2d 221 (1981), and expert testimony on the actual deterrent effect of capital punishment. *State v. George*, 323 S.C. 496, 476 S.E.2d 903 (1996). Finally, judicial comments pointing out the possibility that a pro-life or pro-death juror might lie to get on a capital jury have also resulted in reversal. *State v. Crisp*, 362 S.C. 412, 608 S.E.2d 429 (2005), and *State v. Owens*, 362 S.C. 175, 607 S.E.2d 78 (2004).

But in this case the proponent of the evidence was the State, though the trial judge ultimately found it admissible. On the one hand, the Court has consistently held that the State cannot minimize a capital jury's sense of responsibility for the defendant's fate by, for example, pointing out that a death sentence is subject to review by the Supreme Court and reversal if shown to be unwarranted. *State v. Gilbert*, 273 S.C. 690, 258 S.E.2d 890 (1979). In *State v. Tyner*, 273 S.C. 646, 258 S.E.2d 559, 566 (1979), the Court observed:

Under our capital punishment statute, the jury is given the considerable burden of deciding whether a defendant convicted of murder will live or die.

Comments concerning the appellate review of a death sentence imply to the jury that its responsibility for determining the fate of the defendant is lessened.

See, also, *State v. Sloan*, 278 S.C. 435, 298 S.E.2d 92 (1982); *State v. Woomer [Woomer II]*, 277 S.C. 170, 284 S.E.2d 357 (1981); *State v. Plath [Plath I]*, and *State v. Woomer [Woomer I]*, 276 S.C. 258, 277 S.E.2d 696 (1981). On the other hand, the Court has also forbid the State's efforts to overstate a capital jury's continuing responsibility for the consequences of its sentencing decision. In *State v. Sloan*, 298 S.E.2d at 93, it reversed where the Solicitor argued during the guilt phase "that if [the capital defendant] was not convicted, the murder would forever remain unsolved." In *State v. Plath [Plath I]*, 284 S.E.2d at 231, the Court also reversed where the Solicitor argued that "he would never ask for the death penalty ... if the jury did not return with a recommendation that the death penalty be imposed."

Federal constitutional law is consistent, as the Court has recognized: the *Due Process Clause* of the *Fourteenth Amendment* prevents the State "from penalizing a defendant for choosing to exercise his right to appeal." *Patrick v. State*, 249 S.C. 203, 562 S.E.2d 609, 612 (2002), citing *North Carolina v. Pearce*, 395 U.S. 711 (1969). "It is impermissible for the State to argue in favor of guilt *or punishment* based upon the accused's assertion of a constitutional right." *State v. Brown*, 289 S.C. 581, 347 S.E.2d 882, 887 (1986) (emphasis in original).

All these concerns – and more – were implicated when the victim's widow testified that she attempted suicide when the Court reversed Stone's death sentence. (For the sake of accuracy and with all due respect for Sergeant Kubala's widow, Teresa, it should be noted that this claim is demonstrably false, although Stone's jury

could not possibly have known otherwise. The Court reversed Stone's death sentence on July 15, 2002. She did not attempt to take her own life until February 11, 2003.) Her testimony both minimized the jury's sense of responsibility for sentencing Stone to death and improperly maximized their responsibility for the consequences of a life sentence: not only would a death sentence be reviewed by the Supreme Court, but a life sentence might well lead to another suicide attempt. Moreover, the callous manner in which the reversal was communicated – a message left on an answering machine – cannot, as with general prison conditions, possibly be attributed to Stone. (Incidentally, the "they" who left the message was never expressly identified. In its context, a reasonable juror might have inferred that the messenger was the Supreme Court itself, although it was most likely the Attorney General's Office or the Solicitor's Office.) Finally, there is something fundamentally unfair about a Solicitor blaming the Supreme Court for his own mistakes and then utilizing the reversal which resulted from those mistakes as evidence in aggravation of punishment at resentencing. Compare *State v. Plath* [*Plath II*], 281 S.C. 1, 313 S.E.2d 619 (1984).

The error cannot possibly have been harmless – even if harmfulness is required for errors of this type. Justice Pleicones' concurrence in *State v. Burkhardt* observes:

Once improper evidence of any kind injects an arbitrary factor into the jury's consideration, this Court cannot uphold the death sentence under *Section 16-3-25(C)(1)*. Moreover, a review for harmless error is unnecessary because, by definition, evidence that implicates an arbitrary factor is prejudicial.

In any case, in *State v. McClure*, 342 S.C. 403, 537 S.E.2d 273, 275 (2000), the Court noted:

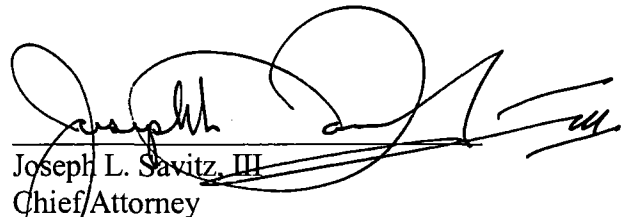
[T]he evaluation of the consequences of an error in the sentencing phase of a capital case [is] more difficult because of the discretion that is given to the sentencing jury. A capital jury can recommend a life sentence for any reason or no reason at all.

Chief Justice Toal's dissent in *Burkhart* also recognizes (albeit in a different context) that "[a]ppellate courts are ill-equipped to speculate about the influence improperly admitted evidence might have exerted on a jury's determination."

To summarize, *S.C. Code Section 16-3-25(C)(1)* prohibits a death sentence based upon an arbitrary factor. A death sentence resulting from evidence the victim's widow tried to kill herself when she learned the Supreme Court had reversed the initial death sentence of her husband's killer is not free from arbitrary factors.

For this reason, the Court should reverse Bobby Wayne Stone's death sentence and remand for resentencing.

Respectfully submitted,



Joseph L. Savitz, III
Chief Attorney

ATTORNEY FOR APPELLANT.

This 25th day of January, 2007.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY WAYNE STONE,

APPELLANT

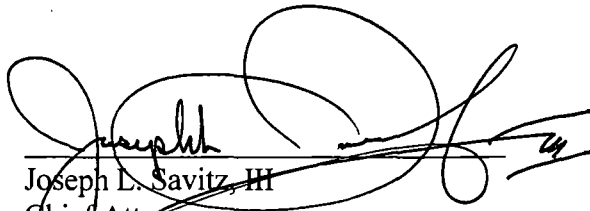
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Resentencing transcript
- (2) December 16, 2006, letter from court reporter regarding transcription of jury selection
- (3) Jury selection transcripts
- (4) Pretrial hearing transcripts
- (5) Indictment
- (6) Statutory instructions
- (7) Sentence (jury)
- (8) Affirmation of sentence
- (9) Sentence (judge)

I certify that this designation contains no matter which is irrelevant to this appeal.

January 25th, 2007

A large, stylized handwritten signature in black ink, appearing to read 'Joseph L. Savitz, III', is written over a horizontal line.

Joseph L. Savitz, III
Chief Attorney

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

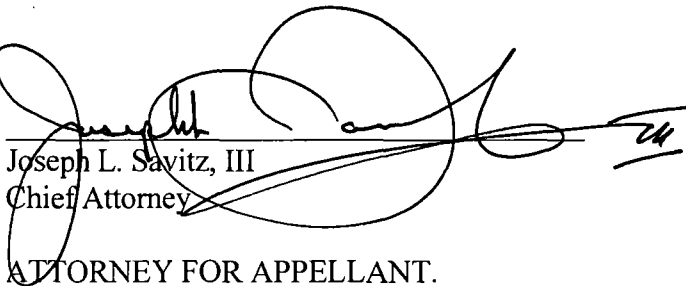
V.

BOBBY WAYNE STONE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 25th day of January, 2007.


Joseph L. Savitz, III
Chief Attorney
ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 25th day of January, 2007.

Racun D. Elliott (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007.

The Supreme Court of South Carolina

The State,

Respondent

v.

Bobby Wayne Stone,

Appellant.

The Honorable Howard P. King
Sumter County
Trial Court Case No. 1996-GS-43-00698

ORDER

For good cause having been shown, the time for serving and filing the Initial Brief of Appellant and Designation of Matter in the above entitled matter is hereby extended until January 26, 2007.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Jean J. Peebles
Acting CHIEF DEPUTY CLERK

Columbia, South Carolina

January 19, 2007

cc: Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County

Howard P. King, Circuit Court Judge

RECEIVED
JAN 18 2007
S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

BOBBY WAYNE STONE,

APPELLANT

PETITION FOR EXTENSION OF TIME

Counsel for Bobby Wayne Stone petitions the Court for a final extension of time, until January 26, in which to file the initial brief and designation of matter in this capital case. Counsel will request no further extensions in connection with this appeal, including preparation and filing of the Record on Appeal and Final Brief of Appellant. In support of this request, counsel shows:

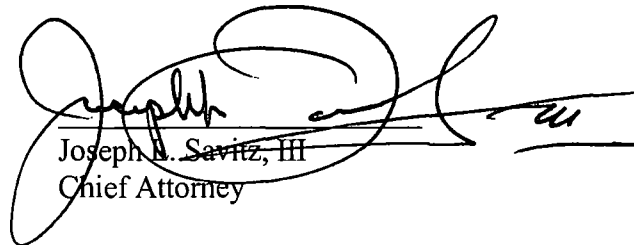
1. Counsel has begun writing the Initial Brief of Appellant, but because of unrelated case load and administrative responsibilities, he has been unable to complete the initial brief, and needs additional time to do so, despite the exercise of due diligence. (In addition to scores of non-capital appeals, counsel is presently responsible for four active death penalty appeals, not including the Stone appeal.)

2. Counsel makes this request in good faith and not for purposes of delay. Counsel is aware of the Court's concern for the expeditious disposition of capital appeals and has made every effort to handle this appeal in an expeditious, efficient manner.

3. Counsel for the State does not oppose this request, as indicated by his signature below.

Accordingly, counsel for Bobby Wayne Stone requests a final extension of time, until January 26, in which to file the initial brief and designation of matter in this capital appeal.

Respectfully submitted,

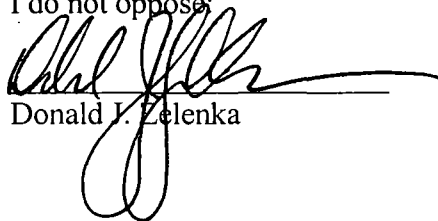


Joseph N. Savitz, III
Chief Attorney

ATTORNEY FOR APPELLANT

This 18th day of January, 2007

I do not oppose:



Donald J. Zelenka

ORIGINAL



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

December 19, 2006

RECEIVED

DEC 20 2006

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: The State v. Bobby Wayne Stone

Dear Mr. Shearouse:

This letter is to notify you that as of December 19, 2006, we have received the jury selection in the above referenced case. Please set our time limits thirty days from December 19, 2006. I have also enclosed a copy of a letter from Melissa Winfield in reference to a portion of the jury selection.

If you have any questions concerning this please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph L. Savitz, III", is written over a circular stamp. The signature is fluid and cursive.

Joseph L. Savitz, III
Chief Attorney

JLS,III/kde

cc: Donald J. Zelenka, Esquire

December 15, 2006

FAX (803-734-1397) & mail
Ms. Karen D. Elliott
Legal Assistant
SCCID
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

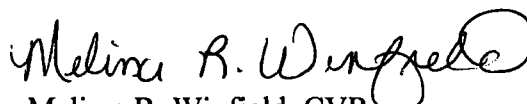
RE: The State vs. Bobby Wayne Stone
1996-GS-43-0698
Trial February 22 - February 24, 2005 Jury Selection

Dear Sharon:

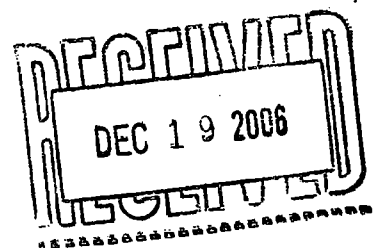
Per your request of December 1, 2006, this letter will serve to advise that during the transcribing of the above-referenced matter unfortunately there was a problem with pulling up my back up for the February 23 jury selection morning session. After taking several different avenues to attempt to recover the jury selection I had no choice but to type from my notes. Although, not verbatim, I was able to tell from my notes who was and who was not stricken from the jury selection. I can't apologize enough for this but there was nothing else I could do to have a more successful recovery. I'm just thankful that out of this long trial the a.m. portion of the 23rd jury selection was all that was not recoverable.

Wishing you and yours a safe and happy Holiday Season.

Sincerely,


Melissa R. Winfield, CVR

cc: Ms. Desiree Allen (Fax # 803-734-0269)
South Carolina Court Administration
1015 Sumter Street, 2nd Floor
Columbia, South Carolina 29201-3739





SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

December 1, 2006

RECEIVED

DEC 01 2006

S.C. SUPREME COURT

Ms. Melissa Winfield
Circuit Court Reporter
355 Kendal Avenue
Sumter, SC 29154

Re: The State v. Bobby Wayne Stone

Dear Ms. Winfield:

We received the last part of the jury selection you sent us on November 27, 2006. However, we will need you to type an official letter stating the jury selection for the 23rd of February was unrecoverable from your backup. If you have any questions, please contact me.

Thank you for your cooperation in this matter.

Sincerely,

Karen D. Elliott
Legal Assistant

xc: SC Supreme Court
Attorney General's Office
Court Administration



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

October 26, 2006

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: The State v. Bobby Wayne Stone

Dear Mr. Shearouse:

On October 10, 2006, I wrote the court informing them of receipt of the jury selection in this case. It has been discovered that the court reporter is sending this transcript in parts and we have not received the whole jury selection. I will inform the Court when we have received the entire transcript.

If you have any questions concerning this please contact me.

Sincerely,

Joseph L. Savitz, III
Chief Attorney

JLS,III/kde

cc: Donald J. Zelenka, Esquire

RECEIVED
OCT 27 2006
S.C. SUPREME COURT

ORIGINAL



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

October 10, 2006

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

RECEIVED
OCT 11 2006
S.C. SUPREME COURT

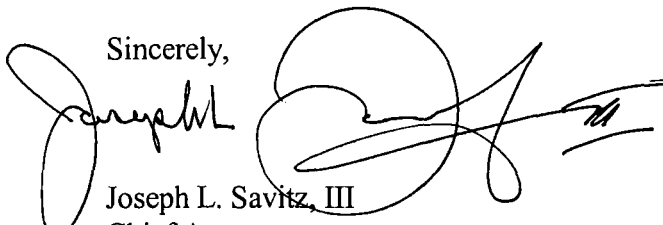
Re: The State v. Bobby Wayne Stone

Dear Mr. Shearouse:

This letter is to notify you that as of October 6, 2006, we have received the jury selection in the above referenced case. Please set our time limits thirty days from October 6, 2006.

If you have any questions concerning this please contact me.

Sincerely,



Joseph L. Savitz, III
Chief Attorney

JLS,III/kde

cc: Donald j. Zelenka, Esquire



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

July 21, 2006

Ms. Melissa Winfield
Circuit Court Reporter
355 Kendal Avenue
Sumter, SC 29154

RECEIVED

JUL 21 2006

S.C. SUPREME COURT

Re: The State v. Bobby Wayne Stone
Indictment: 1996-GS-43-00698
County: Sumter
Date of Trial: 2/22/05 – 2/27/05 (Jury Selection)
Judge: Howard P. King

Dear Ms. Winfield:

As we stated in our letter dated May 18, 2006, we received the jury roster in the above referenced case from you. However, this is not what we are requesting. We need the transcribed jury selection. Please send us this as soon as possible. The Court is inquiring about this again and we can't complete the research on this death penalty case until we have the jury selection. If you have any questions, please contact me.

Thank you for your cooperation in this matter.

Sincerely,

Karen D. Elliott

Karen D. Elliott
Legal Assistant

xc: SC Supreme Court
Attorney General's Office
Court Administration



Division of Appellate Defense

Post Office Box 11589
Columbia, S.C. 29211-1589

Telephone: (803) 734-1343
Fax: (803) 734-1397

June 22, 2006

Ms. Melissa Winfield
Circuit Court Reporter
355 Kendal Avenue
Sumter, SC 29154

RECEIVED

JUN 22 2006

S.C. SUPREME COURT

Re: The State v. Bobby Wayne Stone
Indictment: 1996-GS-43-00698
County: Sumter
Date of Trial: 2/22/05 – 2/27/05 (Jury Selection)
Judge: Howard P. King

Dear Ms. Winfield:

As we stated in our letter dated May 18, 2006, we received the jury roster in the above referenced case from you. However, this is not what we are requesting. We need the transcribed jury selection. Please send us this as soon as possible. The Court is inquiring about this again and we can't complete the research on this death penalty case until we have the jury selection. If you have any questions, please contact me.

Thank you for your cooperation in this matter.

Sincerely,

Karen D. Elliott
Legal Assistant

xc: SC Supreme Court
Attorney General's Office
Court Administration



SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense

Post Office Box 11589
Columbia, S.C. 29211-1589

Telephone: (803) 734-1343
Fax: (803) 734-1397

May 18, 2006

RECEIVED

MAY 18 2006

S.C. SUPREME COURT

Ms. Melissa Winfield
Circuit Court Reporter
355 Kendal Avenue
Sumter, SC 29154

Re: The State v. Bobby Wayne Stone
Indictment: 1996-GS-43-00698
County: Sumter
Date of Trial: 2/22/05 – 2/27/05 (Jury Selection)
Judge: Howard P. King

Dear Ms. Winfield:

We received the jury roster in the above referenced case from you. However, this is not what we are requesting. We need the transcribed jury selection. Please send us this as soon as possible. The Court is inquiring about this and we can't complete the research on this death penalty case until we have the jury selection. If you have any questions, please contact me.

Thank you for your cooperation in this matter.

Sincerely,

Karen D. Elliott
Legal Assistant

xc: SC Supreme Court
Attorney General's Office
Court Administration

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Chief Attorney

Wanda H. Carter
Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, S.C. 29201

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

March 28, 2006

Ms. Melissa Winfield
Circuit Court Reporter
355 Kendal Avenue
Sumter, SC 29154

RECEIVED

MAR 28 2006

S.C. SUPREME COURT

Re: The State v. Bobby Wayne Stone (**SECOND REQUEST**)
Indictment: 1996-GS-43-00698
County: Sumter
Date of Trial: 2/22/05 – 2/27/05 (Jury Selection & Trial)
Judge: Howard P. King

Dear Ms. Winfield:

We received the above referenced transcript from you on September 23, 2005. However, while reading the transcript, the attorney realized the jury selection was missing from the transcript. I have enclosed a portion of the transcript stating when the jury selection was done but left out of the transcript.

Please send us this portion of the transcript as soon as possible. I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions or problems, please contact me.

Thank you for your cooperation in this matter.

Sincerely,



Karen D. Elliott
Legal Assistant

xc: SC Supreme Court
Attorney General's Office
Court Administration

The Supreme Court of South Carolina

The State,

Respondent

v.

Bobby Wayne Stone,

Appellant.

The Honorable Howard P. King

Sumter County

Trial Court Case No. 1996-GS-43-00698

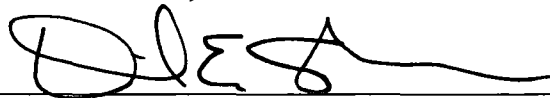
ORDER

For good cause having been shown, the time for serving and filing the Appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until thirty (30) days after receipt of the transcript from the Jury Selection. Counsel is to notify this office immediately upon receipt of the transcript.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

February 22, 2006

cc: Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Howard P. King, Circuit Court Judge

RECEIVED

FEB 21 2006

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

BOBBY WAYNE STONE,

APPELLANT

MOTION TO HOLD APPEAL IN ABEYANCE

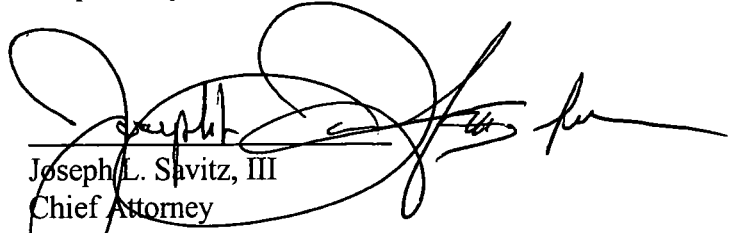
Counsel for Bobby Wayne Stone moves the Court to hold Mr. Stone's case in abeyance for thirty days after receipt of the transcript of the jury selection. In support of this request, counsel shows:

1. While reading the transcript, counsel discovered that the jury selection had not been transcribed. Counsel cannot complete this brief without jury selection.
2. Counsel requested a transcription from the court reporter on February 17, 2006. A copy of that request is attached.
3. As indicated by signature below, opposing counsel does not oppose this request.

4. Counsel makes this motion in good faith and not for purposes of delay.

Accordingly, counsel for Bobby Wayne Stone asks the Court to hold Mr. Stone's case in abeyance for thirty days after receipt of the transcript.

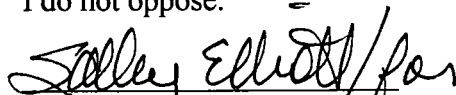
Respectfully submitted,



Joseph L. Savitz, III
Chief Attorney
ATTORNEY FOR APPELLANT

This 21st day of February, 2006

I do not oppose:



Donald J. Zelenka

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

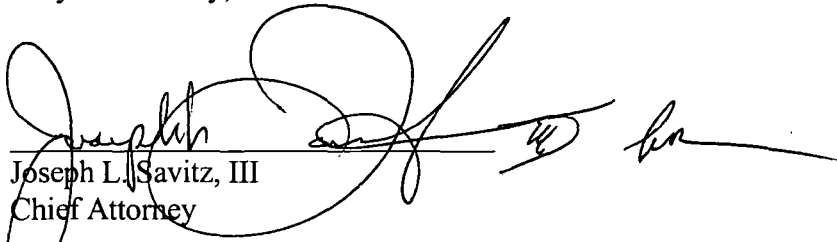
V.

BOBBY WAYNE STONE,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the motion to hold appeal in abeyance in this case has been served on Donald J. Zelenka, Esquire, this 21st day of February, 2006.


Joseph L. Savitz, III
Chief Attorney
ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 13th day
of February, 2006.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: March 13, 2007.

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Chief Attorney

Wanda H. Carter
Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, S.C. 29201

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

February 17, 2006

Ms. Melissa Winfield
Circuit Court Reporter
355 Kendal Avenue
Sumter, SC 29154

Re: The State v. Bobby Wayne Stone
Indictment: 1996-GS-43-00698
County: Sumter
Date of Trial: 2/22/05 – 2/27/05 (Jury Selection & Trial)
Judge: Howard P. King

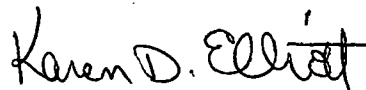
Dear Ms. Winfield:

We received the above referenced transcript from you on September 23, 2005. However, while reading the transcript, the attorney realized the jury selection was missing from the transcript. I have enclosed a portion of the transcript stating when the jury selection was done but left out of the transcript.

Please send us this portion of the transcript as soon as possible. I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions or problems, please contact me.

Thank you for your cooperation in this matter.

Sincerely,



Karen D. Elliott
Legal Assistant

xc: SC Supreme Court
Attorney General's Office

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Chief Attorney

Wanda H. Carter
Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, S.C. 29201

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

February 17, 2006

Ms. Melissa Winfield
Circuit Court Reporter
355 Kendal Avenue
Sumter, SC 29154

RECEIVED

FEB 17 2006

S.C. SUPREME COURT

Re: The State v. Bobby Wayne Stone
Indictment: 1996-GS-43-00698
County: Sumter
Date of Trial: 2/22/05 – 2/27/05 (Jury Selection & Trial)
Judge: Howard P. King

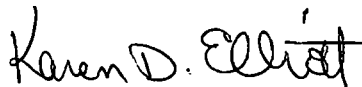
Dear Ms. Winfield:

We received the above referenced transcript from you on September 23, 2005. However, while reading the transcript, the attorney realized the jury selection was missing from the transcript. I have enclosed a portion of the transcript stating when the jury selection was done but left out of the transcript.

Please send us this portion of the transcript as soon as possible. I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions or problems, please contact me.

Thank you for your cooperation in this matter.

Sincerely,



Karen D. Elliott
Legal Assistant

xc: SC Supreme Court
Attorney General's Office

The Supreme Court of South Carolina

The State,

Respondent

v.

Bobby Wayne Stone,

Appellant.

The Honorable Howard P. King
Sumter County
Trial Court Case No. 1996-GS-43-00698

ORDER

For good cause having been shown, the time for serving and filing the Appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until February 20, 2006.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Brenda I. Shealy
CLERK
Chief Deputy

Columbia, South Carolina

January 20, 2006

cc: Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Howard P. King, Circuit Court Judge

RECEIVED

JAN 19 2006

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

BOBBY WAYNE STONE,

APPELLANT

MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

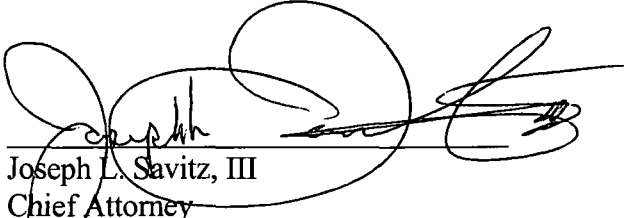
Counsel for Bobby Wayne Stone respectfully requests an additional thirty days (until February 20) in which to file the initial brief and designation of matter in this death penalty case. Counsel has previously received one thirty-day extension in connection with this step in the process. In support of this request, counsel shows:

- (1) Counsel is handling a heavy caseload of other capital and noncapital appeals along with various administrative duties.
- (2) Counsel makes this request in good faith and not for purposes of delay.
- (3) Counsel for the Attorney General's office does not oppose this request, as shown by

his signature.

WHEREFORE, counsel for appellant requests an additional thirty days (until February 20) in which to file the initial brief and designation of matter in this death penalty case.

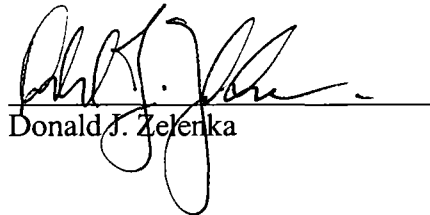
Respectfully submitted,



Joseph L. Savitz, III
Chief Attorney
Attorney for Appellant

This 19th day of January, 2006

I do not oppose:



Donald J. Zelenka

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

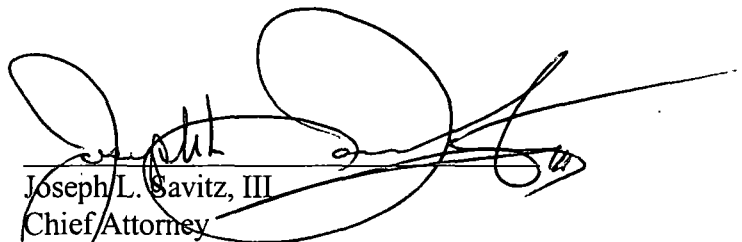
V.

BOBBY WAYNE STONE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the petition for extension of time in the above referenced case has been served upon opposing counsel, Donald J. Zelenka, this 19th day of January, 2006.



Joseph L. Savitz, III
Chief Attorney
Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 19th day of January, 2006.

Raven D. Elliott (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007

The Supreme Court of South Carolina

The State,

Respondent

v.

Bobby Wayne Stone,

Appellant.

The Honorable Howard P. King
Sumter County

Trial Court Case No. 1996-GS-43-00698

ORDER

For good cause having been shown, the time for serving and filing the Appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until January 19, 2006.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

December 20, 2005

cc: Acting Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka

South Carolina Office of Appellate Defense

ORIGINAL

Joseph L. Savitz, III
Chief Attorney

Wanda P. Carter
Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, S.C. 29201

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

December 19, 2005

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O. Box 11330
Columbia, SC 29211

RECEIVED
2005 DEC 19 PM 4:30
SC SUPREME COURT

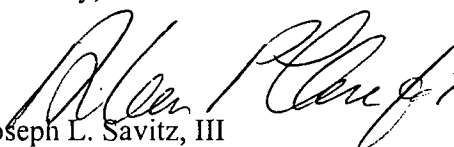
Re: The State v. Bobby Wayne Stone (capital case)

Dear Mr. Shearouse:

The initial brief and designation of matter are due to be served and filed with the Court today. However, because of my heavy workload at this time, I am requesting an extension until January 19, 2006 in which to serve and file the brief.

By copy of this letter, I am informing Donald J. Zelenka, of the Attorney General's Office, of my request.

Sincerely,


Joseph L. Savitz, III

JLS, III/lec

cc: Donald J. Zelenka, Esquire

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Acting Chief Attorney

Wanda P. Hagler
Acting Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, S.C. 29201

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

RECEIPT

I, Debbie M. Hopkins, of the South Carolina Supreme Court, have received the following original trial transcript(s) in the death penalty case of State v. Bobby Wayne Stone

1. November 2, 2004 (Melissa R. Winfield)
2. February 11, 2005 (Carol M. Thueme)
3. February 14, 2005 (Melissa R. Winfield)
4. February 22-27, 2005 (Melissa R. Winfield)

Date: November 28, 2005

Debbie M. Hopkins
(Name)

ORIGINAL

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Acting Chief Attorney

Wanda H. Carter
Acting Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, SC 29201

Telephone (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

November 10, 2005

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
Post Office Box 11330
Columbia, SC 29211

Dear Mr. Shearouse:

The following case falls under the 60 day rule for appeals, and the date we received the transcript is listed to the side.

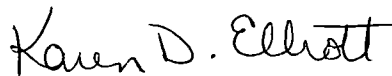
The State v. Bobby Wayne Stone

10/18/05

I would appreciate you beginning our time limits from the above dates, and if you need additional information, or have any questions please contact me.

Thank you for your assistance in this matter.

Sincerely,



Karen D. Elliott
Legal Assistant

RECEIVED
2005 NOV 10 PM 4:10
SC SUPREME COURT

South Carolina Office of Appellate Defense

RECEIVED

2005 OCT -6 PM 4: 26

Joseph L. Savitz, III
Acting Chief Attorney

1205 Pendleton Street, Room 306
Columbia, SC 29201

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Eleanor Duffy Cleary
Assistant Appellate Defenders

S.C. SUPREME COURT

October 6, 2005

Ms. Desiree Allen
S.C. Court Administration
1015 Sumter Street, 2nd Floor
Columbia, South Carolina 29201-3739

Dear Ms. Allen:

Below is a list of transcript(s) that were requested by this office. Pursuant to Supreme Court Rule 206(e), the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same.

<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Melissa Winfield	5/27/05	Bobby Wayne Stone

Trial Date: 2/14/05 (Hearing on Availability of R

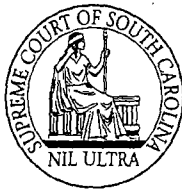
I would appreciate your confirming in writing as to the status of the above-referenced transcript(s). If you should have any questions, please do not hesitate to contact me.

Sincerely,



Karen D. Elliott
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



South Carolina Court Administration

South Carolina Supreme Court
Columbia, South Carolina

ROSALYN FRIERSON
DIRECTOR

MARY S. SCHROEDER
DEPUTY DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-0269

MEMORANDUM

RECEIVED
SEP 14 2005
S.C. SUPREME COURT

TO: Karen D. Elliott
FROM: Desiree R. Allen *DR*
RE: Status Request – Late Letter August 9, 2005
DATE: September 13, 2005

Pursuant to your letters, I was able to confirm the status of the following transcript:

<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>	<u>Status</u>
Melissa Winfield	5.27.05	Bobby Wayne Stone	Ext. to 9.14.05

CC: S.C. Supreme Court ✓
Office of Attorney General

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Acting Chief Attorney

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Columbia, SC 29201

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Assistant Appellate Defenders

August 9, 2005

Ms. Desiree Allen
S.C. Court Administration
1015 Sumter Street, 2nd Floor
Columbia, South Carolina 29201-3739

Dear Ms. Allen:

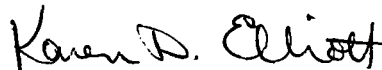
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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Melissa Winfield	5/27/05	Bobby Wayne Stone

Trial Date: 2/22/05 - 2/27/05 (Jury Selection & T

I would appreciate your confirming in writing as to the status of the above-referenced transcript(s). If you should have any questions, please do not hesitate to contact me.

Sincerely,



Karen D. Elliott
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office

RECEIVED
2005 AUG -9 PM 4:17
SC SUPREME COURT

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
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Eleanor Duffy Cleary
Assistant Appellate Defenders

RECEIVED
2005 AUG -9 PM 4:17
SC SUPREME COURT

August 9, 2005

Ms. Desiree Allen
S.C. Court Administration
1015 Sumter Street, 2nd Floor
Columbia, South Carolina 29201-3739

Dear Ms. Allen:

Below is a list of transcript(s) that were requested by this office. Pursuant to Supreme Court Rule 206(e), the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same.

<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Melissa Winfield	5/27/05	Bobby Wayne Stone

Trial Date: November 2, 2004 (Motion Hearing)

I would appreciate your confirming in writing as to the status of the above-referenced transcript(s). If you should have any questions, please do not hesitate to contact me.

Sincerely,



Karen D. Elliott
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office

South Carolina Office of Appellate Defense

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August 9, 2005

Ms. Desiree Allen
S.C. Court Administration
1015 Sumter Street, 2nd Floor
Columbia, South Carolina 29201-3739

Dear Ms. Allen:

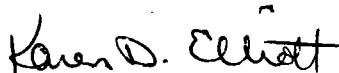
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<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
Ms. Melissa Winfield	5/27/05	Bobby Wayne Stone

Trial Date: 2/14/05 (Hearing on Availability of R

I would appreciate your confirming in writing as to the status of the above-referenced transcript(s). If you should have any questions, please do not hesitate to contact me.

Sincerely,



Karen D. Elliott
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office

RECEIVED
2005 AUG -9 PM 4: 17
SC SUPREME COURT



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

May 19, 2005

Mr. Bobby Wayne Stone, #5051
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: The State v. Stone, Bobby Wayne

Dear Mr. Stone:

This will acknowledge receipt of your check in the amount of \$1.60 pursuant to this Court's letter dated April 20, 2005.

Enclosed you will find a copy of the Judge's report filed in your case.

Very truly yours,



CLERK

DES/dmh

Enclosure

Dear Mr Shearouse

here is The check for The Juges.

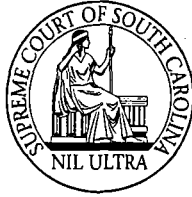
Report in my case Thanks for all

Your help in This matter *Bobby [signature]*

RECEIVED

MAY 19 2005

S.C. SUPREME COURT



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 20, 2005

Mr. Bobby Wayne Stone, #5051
Lieber Correctional Institution
P. O. Box 205
Ridgeville, SC 29472

Re: The State v. Stone, Bobby Wayne

Dear Mr. Stone:

This is in response to your letter received in this office on April 19, 2005.

Please be advised that you are being represented by the South Carolina Office of Appellate Defense in this matter. They will assign an attorney to your case once they receive the transcripts.

We can provide you with a copy of the judge's report for \$1.60 (8 pages at twenty cents per page).

Very truly yours,



CLERK

DES/dmh

cc: South Carolina Office of Appellate Defense
Office of the Attorney General

Dear MR Davies

I would like a copy of The Juges
Report in my case. I would also
like to know who my attorney of
Record is. Because as of 4/18/2005
I haven't heard from any one about
my case and what's going on
with it. Thank for your Time and
help with this. Betty R. R. R.

RECEIVED

APR 19 2005

S.C. SUPREME COURT

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Acting Chief Attorney

Wanda P. Hagler
Acting Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, SC 29201

Telephone (803) 734-1330
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Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

March 28, 2005

Ms. Melissa Winfield
Circuit Court Reporter
355 Kendal Avenue
Sumter, SC 29154

Dear Ms. Winfield:

Our office has been requested to perfect the appeal arising out of:

The State v. Bobby Wayne Stone

Indictment #: 1996-GS-43-00698

County: Sumter

Date of Trial: November 2, 2004 (Motion Hearing)

Presiding Judge: Howard P. King

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

It has been brought to our attention that the State Printing Office experiences problems when the transcript is prepared on onionskin paper. **PLEASE DO NOT USE ONIONSKIN PAPER.**

We request that the lines on the paper be numbered from 1-25, and that you include in the transcript any and all recorded motions, pre and post-trial. Additionally, please transcribe the jury selection, and the State and defense counsel's opening and closing arguments. We have found that even if there are no objections, we need to review both opening and closing arguments for appeal.

Ms. Melissa Winfield

March 28, 2005

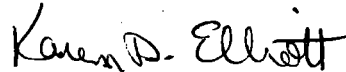
Page Two

If you are aware of the existence of co-defendants not listed in the prior captioned case, please contact us prior to transcribing the transcript. In this manner, we can consult our records to ensure that in ordering a transcript, a duplication has not occurred. In addition, if the Attorney General's Office has already requested an original transcript, please notify us.

I am sorry for any inconvenience this may cause, but I appreciate your assistance in this matter. If you have any questions, or problems, please contact me.

Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Karen D. Elliott".

Karen D. Elliott
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
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March 28, 2005

Ms. Melissa Winfield
Circuit Court Reporter
355 Kendal Avenue
Sumter, SC 29154

Dear Ms. Winfield:

Our office has been requested to perfect the appeal arising out of:

The State v. Bobby Wayne Stone

Indictment #: 1996-GS-43-00698

County: Sumter

Date of Trial: 2/14/05 (Hearing on Availability of Ruth Griffith to Testify)

Presiding Judge: Howard P. King

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

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RECEIVED
2005 MAR 28 PM 4:33
SC SUPREME COURT

Ms. Melissa Winfield
March 28, 2005
Page Two

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Karen D. Elliott
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
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Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

March 28, 2005

Ms. Melissa Winfield
Circuit Court Reporter
355 Kendal Avenue
Sumter, SC 29154

Dear Ms. Winfield:

Our office has been requested to perfect the appeal arising out of:

The State v. Bobby Wayne Stone

Indictment #: 1996-GS-43-00698

County: Sumter

Date of Trial: 2/22/05 - 2/27/05 (Jury Selection & Trial)

Presiding Judge: Howard P. King

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

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RECEIVED
2005 MAR 28 PM 4:33
SC SUPREME COURT

Ms. Melissa Winfield

March 28, 2005

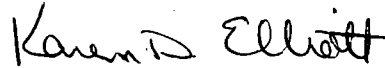
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Karen D. Elliott
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office

South Carolina Office of Appellate Defense

Joseph L. Savitz, III
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Wanda P. Hagler
Acting Deputy Chief Attorney

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Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

March 28, 2005

Ms. Carol M. Thueme
Circuit Court Reporter
P O Box 1981
Irmo, SC 29063

Dear Ms. Thueme:

Our office has been requested to perfect the appeal arising out of:

The State v. Bobby Wayne Stone

Indictment #: 1996-GS-43-00698

County: Sumter

Date of Trial: February 11, 2005 (Motions & Muror
Excuses)

Presiding Judge: Howard P. King

It is my understanding that you were the court reporter at this time. That being the case, I request that you send this office the original trial transcript along with your bill. If you send a copy to this office, please bill us accordingly. To ensure prompt payment of this bill, please prepare it on the enclosed CID FORM 3500 (Substitution for SCCA DI-4) and include the original criminal case number (Indictment number) where the space is provided.

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2005 MAR 28 PM 4:33
SC SUPREME COURT

Ms. Carol M. Thueme

March 28, 2005

Page Two

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Thank you for your kind cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Karen D. Elliott".

Karen D. Elliott
Legal Assistant

xc: S.C. Supreme Court
Attorney General's Office



State of South Carolina
The Circuit Court of the Third Judicial Circuit

HOWARD P. KING
JUDGE

141 NORTH MAIN STREET, SUITE 303
POST OFFICE BOX 189
SUMTER, SOUTH CAROLINA 29151-0189
TELEPHONE: (803) 436-2150
FAX: (803) 436-2403
E-MAIL: hkingj@sccourts.org

March 7, 2005

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

RECEIVED

MAR 8 2005

S.C. SUPREME COURT

RE: *State v. Bobby Wayne Stone*

Dear Mr. Shearouse:

I am enclosing my report regarding the death penalty resentencing hearing of Bobby Wayne Stone. You will note that this report contains the stamp of James C. Campbell, Clerk of Court for Sumter County. My interpretation of Section 16-3-25 was that this report needed to be filed with the local Clerk of Court who then transmits it to the Supreme Court. However, Mr. Campbell informed me that he had discussed the matter with you and that you would be sending me instructions about filing it directly with the Supreme Court.

Please let me know if there is anything further you need from me.

Thank you very much.

Yours very truly,

Howard P. King
Presiding Judge
Third Judicial Circuit

HPK/cpk
Enclosures

REPORT OF THE TRIAL JUDGE
OF THE COURT OF GENERAL SESSIONS FOR
SUMTER COUNTY, SOUTH CAROLINA

RECORDED

2005 FEB 29 PM 4:39

State v. Bobby Wayne Stone

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Docket No. 96-GS-43-698

A. Data Concerning Defendant

1. Name: **Bobby Wayne Stone**

2. Date of Birth: 6

3. Social Security Number:

4. Gender: **Male**

5. Race: **White**

6. Education (highest grade completed): **11th grade**

7. Do you have an opinion as to Defendant's intelligence level? [**X**] Yes [] No

i. If yes, is the Defendant's intelligence level:

1. Below average []
2. Average [**X**]
3. Above Average []

8. Was a psychiatric evaluation performed? [**X**] Yes [] No

i. If performed, by whom? **Dr. John Dunlap, Jeff McKee and Harold Morgan**

ii. If performed is Defendant able to

1. Distinguish right from wrong? [**X**] Yes [] No
2. Cooperate intelligently in his own defense? [**X**] Yes [] No

iii. If performed, were character or behavior disorders found? [**X**] Yes [] No

1. If yes, please elaborate: **Anti-social personality disorder.**

9. Does the Defendant have a record of prior convictions? [**X**] Yes [] No

See attached record

10. Was the Defendant a resident or non-resident of the county in which the trial was held?

[**X**] Resident [] Non-resident

RECEIVED

MAR 8 2005

S.C. SUPREME COURT

B. Data Concerning Pretrial Matters

1. The Defendant was arrested on: **February 26, 1996.**
2. Was a preliminary hearing requested? [**X**] Yes [] No
3. Was a preliminary hearing conducted? [**X**] Yes [] No
4. The Defendant was indicted at the **August 26, 1996** term of the Court of General Sessions for **Sumter** County, South Carolina.
5. List each charge alleged in the indictment:
 - i. **First degree burglary**
 - ii. **Murder**
 - iii. **Possession of a weapon during the commission of a violent crime**
6. The Defendant was arraigned on: **October 2, 1996.**
7. Was the Defendant provided with a true copy of the whole indictment at least three days prior to his trial thereupon? [**X**] Yes [] No
8. Did the Solicitor notify the Defendant at least thirty days before trial that the State would seek imposition of the death penalty on the Defendant? [**X**] Yes [] No
9. Did the Solicitor make known to the Defendant in writing prior to trial the evidence in aggravation of punishment thereafter introduced by the State during the trial or during the sentencing proceeding? [**X**] Yes [] No
10. Did the Defendant move for a change of venue? [**X**] Yes [] No
 - i. If yes, was venue changed? [] Yes [**X**] No

C. Data concerning the Trial

1. The Defendant was brought to trial in the Court of General Sessions for Sumter County, South Carolina, on **February 22, 2005 (resentencing proceeding).**
2. How did the Defendant plead? [] Guilty [] Not guilty **N/A (resentencing proceeding)**
3. List each offense of which the Defendant was convicted and each offense of which the Defendant was acquitted.
 - i. The offenses of which the Defendant was convicted are (**all at the original trial**):
 1. **First degree burglary**
 2. **Murder**

3. **Possession of a weapon during the commission of a violent crime**

ii. The offenses of which the Defendant was acquitted are:

1. **None**

4. On what date and time did the conviction occur?

i. **January 26, 1997. (original trial)**

D. Data relating to sentencing proceeding

1. Before whom was the Defendant's sentencing proceeding conducted?

☐ Same Trial Jury ☐ Same Trial Judge
☒ New Jury ☒ New Trial Judge

i. If conducted before the same trial judge or a new trial judge:

a. And if the Defendant was convicted by a jury,

i. Did the Defendant and the State waive having the trial judge recommend sentence? ☐ Yes ☒ No

ii. If not, was the sentencing proceeding conducted by the trial judge because the case, due to non-prejudicial error, had been remanded to the trial court for resentencing based upon the record and argument of counsel?
☒ Yes ☐ No

b. On what date and at what time was the sentencing proceeding held?

i. **February 22, 2005 (9 am) – February 27, 2005 (3:30 pm)**

c. If such proceeding was conducted less than 24 hours after the Defendant was convicted, did the Defendant waive the 24-hour waiting period?

i. **N/A**

d. And if the Defendant was convicted on a plea of guilty, on what date was the sentencing proceeding held?

i. **N/A**

ii. If conducted before a new jury:

a. On what date was the sentencing proceeding held?

i. **February 22, 2005 (9 am) – February 27, 2005 (3:30 pm)**

b. Was such proceeding conducted before the same judge who presided over the Defendant's trial? ☐ Yes ☒ No

2. Which of the following statutory aggravating circumstances were instructed, if the sentencing proceeding was conducted before a jury, and which of those circumstances were found irrespective of whether or not that proceeding was conducted before a jury or trial judge?

	<u>Instructed</u>	<u>Found</u>
i. Murder was committed while in the commission of:		
1. Criminal Sexual Conduct	[]	[]
2. Kidnapping	[]	[]
3. Burglary	[X]	[]
4. Robbery, while armed w/ a deadly weapon	[]	[]
5. Larceny w/ use of a deadly weapon	[]	[]
6. Killing by poison	[]	[]
7. Physical torture	[]	[]
ii. Murder was committed by person w/ a prior record of conviction for murder	[]	[]
iii. By his act of murder the offender knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person	[]	[]
iv. The offender committed the offense of murder for himself or another for the purpose of receiving money or any other thing of monetary value	[]	[]
v. The murder of a judicial officer, former judicial officer, solicitor, former solicitor, or other officer of the court during or because of the exercise of that officer's official duties.	[]	[]
vi. The offender cause or directed another to commit murder or committed murder as an agent or employee of another person.	[]	[]
vii. The offense of murder was committed against any peace officer, corrections employee, or fireman while engaged in the performance of that individual's official duties.	[X]	[X]
viii. Murder wherein two or more persons are murdered by the Defendant by one act or pursuant to one scheme or course of conduct.	[]	[]
ix. The murder of a child eleven years of age or younger.	[]	[]
3. Were the aggravating circumstances found supported by the evidence?		
[X] Yes [] No		

4. Was there evidence of mitigating circumstances?
[X] Yes [] No
5. If the answer to the previous question is "yes," which of the following mitigating circumstances was in evidence?
- i. The defendant has no significant history of prior criminal convictions involving the use of violence against another person. []
 - ii. The murder was committed while the defendant was under the influence of mental or emotional disturbance. [X]
 - iii. The victim was a participant in the defendant's conduct or consented to the act. []
 - iv. The defendant was an accomplice in the murder committed by another person and his participation was relatively minor. []
 - v. The defendant acted under duress or under the domination of another person. []
 - vi. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired. [X]
 - vii. The age or mentality of the defendant at the time of the crime. [X]
 - viii. The defendant was provoked by the victim into committing murder. []
 - ix. The defendant was below the age of eighteen at the time of the crime. []
 - x. Other. []
6. If tried with a jury, was the jury instructed to consider the circumstances in Question No. 5 as mitigating circumstances? [X] Yes [] No
7. For its deliberation, was the jury provided in writing the statutory instructions as to aggravating and mitigating circumstances? [X] Yes [] No
8. As trial judge, did you, prior to imposing the sentence of death upon the defendant, find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor? [X] Yes [] No

E. Data Relating to Offense

1. Was there evidence that the defendant, at the time of the offense was committed, was:

i. Under the influence of alcohol [X] Yes [] No

ii. Under the influence of narcotics or other dangerous drugs [X] Yes [] No

2. Were any weapons used in the commission of the crime of murder?

[X] Yes [] No

i. If yes, check each weapon used:

- | | |
|---------------------|-------|
| 1. Poison | [] |
| 2. Pistol | [X] |
| 3. Rifle | [] |
| 4. Shotgun | [] |
| 5. Blunt instrument | [] |
| 6. Sharp instrument | [] |
| 7. Motor Vehicle | [] |
| 8. Other | [] |

3. Cause of death: **Gunshot wound to head and gunshot wound to neck; both potentially fatal.**

4. County in which the body was found: **Sumter**

5. County in which the murder occurred if different from county in which the body was found:
N/A

F. Data Relating to Victim

1. What was the victim's age? **32**

2. Was the victim related by blood or marriage to the defendant? [] Yes [X] No

3. Was the victim the same race as the defendant? [X] Yes [] No

4. Was the victim the same gender as the defendant? [X] Yes [] No

5. Was the victim physically harmed or tortured? [X] Yes [] No

i. If yes, state nature of harm or extent of torture: **Victim was shot once in the head and once in the neck with a .22 caliber semi-automatic pistol.**

G. Data Concerning Defense Counsel

1. Who were the defendant's attorneys and what are their mailing addresses?

Cameron B. Littlejohn, Jr.
1720 Main St., Suite 202
Columbia, SC 29201

James H. Babb
P.O. Box 8098
Sumter, SC 29150-8098

2. Did the defendant retain his own counsel, or did the court appoint defense counsel?
[] Retained [X] Appointed
3. Identify by name each attorney who, at the time of his or her appointment, was employed by the Public Defender's Office:
James H. Babb, Esq.
4. Did each counsel serve throughout the trial? [X] Yes [] No

H. General Considerations

- | | | |
|---|-----------|----------|
| 1. Was race raised by the defense as an issue in the trial? | [] Yes | [X] No |
| 2. Did race otherwise appear as an issue in the trial? | [] Yes | [X] No |
| 3. Were members of the defendant's race represented in the petit jury? | [X] Yes | [] No |
| 4. Were members of the defendant's race represented in the jury venire? | [X] Yes | [] No |
| 5. Was there any evidence that members of the defendant's race were systematically excluded from the jury? | [] Yes | [X] No |
| 6. Was the jury instructed to exclude race as an issue? | [] Yes | [X] No |
| 7. Was there extensive publicity in the community concerning this case? | [X] Yes | [] No |
| 8. Was the jury instructed to disregard such publicity? | [X] Yes | [] No |
| 9. Was the jury sequestered? | [X] Yes | [] No |
| 10. Was the jury instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when recommending sentence? | [X] Yes | [] No |

11. Your general comments concerning the appropriateness of the sentence imposed in this case:

In view of the fact that two juries have recommended the sentence of death for the murder of a law enforcement officer, I cannot say that the death sentence is inappropriate.

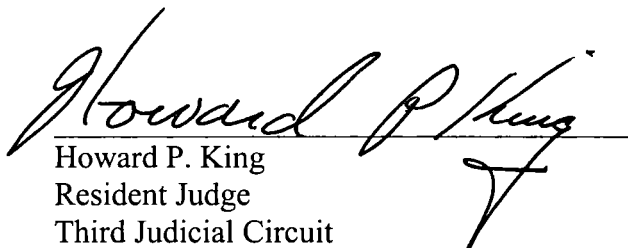
12. This report was submitted to the defendant's counsel for such comments as he or she desired to make concerning the factual accuracy of this report, and:

- ☐ Their comments are attached
☒ They stated that they had no comment
☐ They have not responded

I. Chronology of the Case

	Elapsed Days
1. Date of offense: February 26, 1996	N/A
2. Date of arrest: February 26, 1996	0
3. Date trial began: February 22, 2005 (resentencing)	3284
4. Date sentence imposed: February 27, 2005	5
5. Date post-trial motions ruled on: February 27, 2005	0
6. Date trial judge's report completed: March 1, 2005	2
7. * Date received by Supreme Court: _____	_____
8. * Date sentence review completed: _____	_____
9. * Total elapsed days: _____	

* To be completed by the Supreme Court


Howard P. King
Resident Judge
Third Judicial Circuit

February 28, 2005
Sumter, South Carolina

ICHR 003F0467CD from SCCH

SUMSL400

.ICHR.003F0467CD.SCCH.20040824 10:15:30

TO: SUMSL400-1587 20040824 10:15:30 003F0467CD

FROM: SCCH-288717 20040824 10:15:29

ICHR REQUEST FOR RAP SHEET

ORI-SC043015A FBI-198576EA4 PUR-C

ATN-SALEEBY, DUDLEY

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-08/24/2004 TIME-10:24:42

REQ ORI-SC043015A THIRD JUDICIAL CIRCU

SID-SC00486165 FBI-198576EA4

NAME-STONE, BOBBY WAYNE

SEX-M RACE-W

HEIGHT-503 WEIGHT-130 EYES-BRO HAIR-BLN SKIN- BORN-SC

FPC-1465PO171711POPI1521 HENRY-14 M 3 R OOO 17

S 11 W OIO

PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

* DNA - TAKEN

DATE RECORD ENTERED--04/26/1985 DATE OF LAST UPDATE--08/20/2002

ADDITIONAL IDENTIFIERS

BIRTH

NAME

DATES MARKS

SOC SEC

MISC NUM

09191965 TAT R SHLD 247311907

09161965 TAT UR ARM 247311905

248311905

CONTRIBUTOR/SUBJECT

DOA/RCVD CHARGE/DISPOSITION/ETC

~~STONE, BOBBY WAYNE~~

03/09/1985

SCSHP0500 SC HIWAY DEPT DIST 5

ARREST CHARGE 01-DRIVING

UNDER THE INFLUENCE

OFFENSE DATE-03/09/1985

PHOTOGRAPH AVAILABLE

STONE, BOBBY WAYNE

05/15/1985

SC0430100 SUMTER PD

CASE-48268

WARR-B345310

ARREST CHARGE 01-BREAKING &

ENTERING AUTO & LARCENY

PHOTOGRAPH AVAILABLE

WARR-B345313

ARREST CHARGE 02-BREAKING

ENTERING AUTO & LARCENY

WARR-B345338

ARREST CHARGE 03-BREAKING &

ENTERING AUTO & LARCENY

WARR-B345328

ARREST CHARGE 04-BREAKING &

WARR-B345329	ENTERING AUTO & LARCENY
WARR-B345330	ARREST CHARGE 05-BREAKING & ENTERING AUTO & LARCENY
WARR-B345331	ARREST CHARGE 06-BREAKING & ENTERING AUTO & LARCENY
WARR-B345332	ARREST CHARGE 07-BREAKING & ENTERING AUTO & LARCENY
WARR-B345333	ARREST CHARGE 08-BREAKING & ENTERING AUTO & LARCENY
WARR-B345334	ARREST CHARGE 09-BREAKING & ENTERING AUTO & LARCENY
WARR-B345335	ARREST CHARGE 10-BREAKING & ENTERING AUTO & LARCENY
WARR-B275502	ARREST CHARGE 11-BREAKING & ENTERING AUTO & LARCENY
WARR-B275503	ARREST CHARGE 12-BREAKING & ENTERING AUTO & LARCENY
WARR-B275504	ARREST CHARGE 13-BREAKING & ENTERING AUTO & LARCENY
WARR-B275505	ARREST CHARGE 14-BREAKING & ENTERING AUTO & LARCENY
WARR-B345328	ARREST CHARGE 15-BREAKING & ENTERING AUTO & LARCENY ARREST INFO-RELEASED ON BOND OR RECOG COURT CHARGE 01-HOUSEBREAKING & GRAND LARCENY COURT DISP-CONVICTED; 1Y-6Y CONFINED; INDETERMINATE; YOA-5C
WARR-B345329	COURT CHARGE 02-BREAKING AND ENTERING AUTO COURT DISP-CONVICTED; 1Y-6Y CONFINED; INDETERMINATE; YOA-5C
WARR-B345330	COURT CHARGE 03-PETIT LARCENY COURT DISP-CONVICTED; 1Y-6Y CONFINED; INDETERMINATE; YOA-5C
WARR-B345331	COURT CHARGE 04-BREAKING AND ENTERING AUTO COURT DISP-CONVICTED; 1Y-6Y CONFINED; INDETERMINATE; YOA-5C
WARR-B345332	COURT CHARGE 05-GRAND LARCENY COURT DISP-CONVICTED; 1Y-6Y CONFINED; INDETERMINATE; YOA-5C
WARR-B345333	COURT CHARGE 06-PETIT LARCENY

WARR-B345313

COURT DISP=CONVICTED;1Y-6Y

CONFINE; INDETERMINATE;

YOA-5C

COURT CHARGE 07-HOUSEBREAKING
AND GRAND LARCENY

**COURT DISP-CONVICTED;6Y-CONFINE

WARR-B345338

COURT CHARGE 08-GRAND LARCENY

**COURT DISP-CONVICTED;1Y-6Y

CONFINE; INDETERMINATE;

CONCURRENT;YOA 5C

SC040055C R & E CENTER COLA
CASE-129034

08/05/1985 CUSTODY STATUS-RECEIVED

START DATE-08/05/1985

COURT CHARGE 01-BREAKING

INTO MOTOR VEHICLE 3 CTS

COURT DISP-MULTIPLE CHARGE

ONE DISPOSITION; 1Y-6Y

CONFINE; INDETERMINATE;

YOA 5C

COURT CHARGE 02-LARCENY 6 CTS

COURT DISP-MULTIPLE CHARGE

ONE DISPOSITION

COURT CHARGE 03-HOUSEBREAKING
2 CTS

COURT DISP-MULTIPLE CHARGE

ONE DISPOSITION

COURT CHARGE 04-PETTY LARCENY

COURT DISP-CONVICTED;SENTENCE
SUSPENDED WHEN IMPOSEDSTONE, BOBBY WAYNE
SC0430100 SUMTER PD
CASE-60889
WARR-B932014

10/27/1987

ARREST CHARGE 01-BURGLARY
PHOTOGRAPH AVAILABLE

WARR-B932016 @

ARREST CHARGE 02-BURGLARY

WARR-B932015

ARREST CHARGE 03-GRAND LARCENY
Y

WARR-B932017

ARREST CHARGE 04-GRAND LARCENY
YARREST INFO-HELD
WARR-B932014COURT CHARGE 01-BURGLARY
COURT DISP-MULTIPLE CHARGE
ONE DISPOSITION; 15Y SUSP;
5Y PROB; CONSECUTIVE

WARR-B932016

COURT CHARGE 02-BURGLARY
COURT DISP-MULTIPLE CHARGE
ONE DISPOSITION

WARR-B932015

COURT CHARGE 03-GRAND LARCENY
COURT DISP-MULTIPLE CHARGE
ONE DISPOSITION; 15Y SUSP;
5Y CONFINES; CONSECUTIVE

WARR-B932017

COURT CHARGE 04-GRAND LARCENY
COURT DISP-MULTIPLE CHARGE

ONE DISPOSITION

SC040055C R & E CENTER COLA 12/15/1987 CUSTODY STATUS RECEIVED
CASE-145286 START DATE 12/15/1987
SC040055C R & E CENTER COLA COURT CHARGE 01-BURGLARY 2ND
DEGREE
COURT DISP CONVICTED; 15Y
CONFINED
SC040055C R & E CENTER COLA COURT CHARGE 02-BURGLARY 2ND
DEGREE
COURT DISP CONVICTED; 15Y
SUSP; 5Y CONFINED; 5Y PROB;
CONSECUTIVE
SC040055C R & E CENTER COLA COURT CHARGE 03-GRAND LARCENY
COURT DISP CONVICTED; 15Y
SUSP; 5Y CONFINED; 5Y PROB;
CONCURRENT

STONE, BOBBY WAYNE 09/28/1995
SC0430000 SUMTER CNTY SO
CASE-118481

ARREST CHARGE 01-LEWD ACT ON
MINOR
PHOTOGRAPH AVAILABLE

STONE, BOBBY WAYNE 02/26/1996
SC0430000 SUMTER CNTY SO
CASE-120918

ARREST CHARGE 01-MURDER
OFFENSE DATE-02/26/1996
PHOTOGRAPH AVAILABLE
ARREST CHARGE 02-BURGLARY 1ST
OFFENSE DATE-02/26/1996
ARREST CHARGE 03-BURGLARY 1ST
OFFENSE DATE-02/26/1996

END OF PAGE 01 - PAGE 02 TO FOLLOW

ICHR 003F0467CE from SCCH

SUMSL400

.ICHR.003F0467CE.SCCH.20040824 10:15:31

TO: SUMSL400-1588 20040824 10:15:31 003F0467CE
FROM: SCCH-288718 20040824 10:15:31

PAGE-02 DATE-08/24/2004 TIME-10:24:42
REQ ORI-SC043015A THIRD JUDICIAL CIRCU
SID-SC00486165 FBI-198576EA4

CONTRIBUTOR/SUBJECTDOA/RCVD CHARGE/DISPOSITION/ETC

CIT-16-3-10 FELONY

DOC-96GS4300698 WARR-E740206

COURT CHARGE 01-MURDER

COURT DISP-CONVICTED;DEATH -

AS RECOMMENDED BY THE JURY

COURT DATE-01/28/1997

CIT-16-11-311 FELONY

DOC-96GS4300698 WARR-E740208

COURT CHARGE 02-BURGLARY

(AFTER JUNE 20, 1985) -

FIRST DEGREE

COURT DISP-CONVICTED;30 YRS

CONSECUTIVE TO THE SENTENC

E FOR MURDER ON WARRANT #

E740206

COURT DATE-01/28/1997

CIT-16-23-490 FELONY

DOC-96GS4300698A

COURT CHARGE 03-POSS. WEAPON
DURING VIOLENT CRIME

COURT DISP-CONVICTED;5 YRS

CONSECUTIVE TO THE SENTENC

ES FOR MURDER & BURGLARY,1

ST ON WARRANTS E740206 &

E740208

COURT DATE-01/28/1997

SC040055C R & E CENTER COLA
CASE-SK5051

CIT-16-3-10 FELONY

01/29/1997 CUSTODY STATUS-RECEIVED
START DATE-01/29/1997

COURT CHARGE 01-MURDER

COURT DISP-CONVICTED;888Y

CONCURRENT

CIT-16-11-311 FELONY

COURT CHARGE 02-BURGLARY 1ST
DEGREE

COURT DISP-CONVICTED;30Y

CONSECUTIVE

COURT CHARGE 03-FIREARMS
PROVISIONCOURT DISP-CONVICTED;5Y CONSE
CUTIVE

@ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

BASED ON SEARCH OF SCLED CJICS CCH FILE USING FBI/198576EA4
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJICS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION
INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
(C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** S C CJICS END OF RECORD **□



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 4, 2005

The Honorable Howard P. King
141 North Main Street, Suite 303
P O Box 189
Sumter, SC 29151-0189

Re: The State v. Stone, Bobby Wayne

Dear Judge King:

As you know, the trial judge must submit a Death Penalty Sentencing Report to the Supreme Court on all death penalty cases. Please find enclosed a copy of this questionnaire for your convenience in completing the report in the above matter.

Very truly yours,



CLERK

DES/dmh

Enclosure

The State of South Carolina
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of General Sessions

Howard P. King, Circuit Court Judge

Case No. 96-GS-43-0698

The State, ... Respondent.

v.

Bobby Wayne Stone, ... Appellant.

RECEIVED

MAR

S.C. SUPREME COURT

NOTICE OF APPEAL

Bobby Wayne Stone appeals the sentence and all adverse rulings in connection with the re-sentencing in this capital prosecution. The sentencing proceeding in question was convened February 22, 2005. Appellant Stone was sentenced February 27, 2005.

Respectfully Submitted BY:

Cameron B. Littlejohn, Jr.

Cameron B. Littlejohn, Jr., Esq.
1720 Main Street, Suite 201
Columbia, South Carolina 29201

James H. Babb

James H. Babb, Esq.
7 East Hampton Avenue
P.O. Box 2685
Sumter, SC 29151-2685

Telephone: (803) 799-1888
Fax: (803) 799-5888

Telephone: (803) 775-3060
Fax: (803) 775-6727

RECEIVED

MAR 4 2005

S.C. SUPREME COURT

Sumter, South Carolina

Dated: February 27, 2005

Other Counsel of Record:

C. Kelley Jackson
Third Circuit Solicitor
Sumter County Courthouse
Sumter, South Carolina 29150
(803) 436-2185
Attorney for Respondent

The State of South Carolina
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of General Sessions

Howard P. King, Circuit Court Judge

Case No. 96-GS-43-0698

The State, ... Respondent.

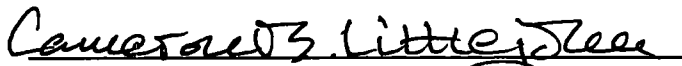
v.

Bobby Wayne Stone, ... Appellant.

PROOF OF SERVICE

We hereby certify the Notice of Appeal has been served upon the prosecution in this case by a copy of the same, together with this Proof of Service being delivered to C. Kelly Jackson, Third Circuit Solicitor, at the Sumter County Courthouse on the 27th day of February, 2005. We further certify that a duplicate original of the Notice of Appeal and of this Proof of Service has transmitted for filing for record with the Honorable James C. Campbell, Clerk of Court for Sumter County, on February 27, 2005.

Respectfully Submitted BY:

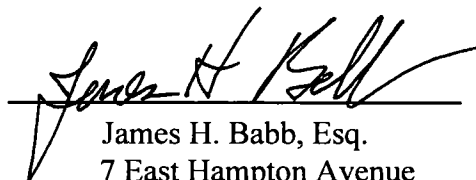


Cameron B. Littlejohn, Jr., Esq.
1720 Main Street, Suite 201
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Telephone: (803) 799-1888
Fax: (803) 799-5888

Sumter, South Carolina

February 27, 2005



James H. Babb, Esq.
7 East Hampton Avenue
P.O. Box 2685
Sumter, SC 29151-2685

Telephone: (803) 775-3060
Fax: (803) 775-6727

CERTIFIED TRUE COPY
OF ORIGINAL FILED

STATE OF SOUTH CAROLINA Dea M. Prueett In the Court of General Sessions

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

Case Number: 96-GS-43-698

COUNTY OF SUMTER

State of South Carolina

v.

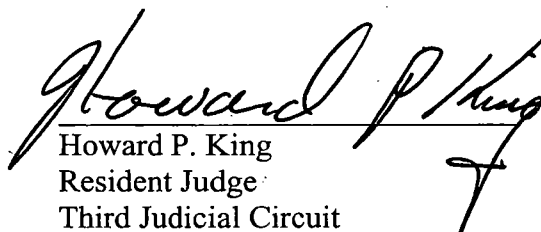
Bobby Wayne Stone,

Defendant.

SENTENCE

The Defendant, Bobby Wayne Stone, has been found guilty of the offense of murder. The jury has recommended that the Defendant should be sentenced to death.

It is, therefore, the judgment of the law and the Sentence of the Court that the Defendant, Bobby Wayne Stone, be taken to the SUMTER Detention Center, and thence to the State Department of Corrections, henceforth to be kept in close and safe confinement until the 22nd day of APRIL, upon which day between the hours of six o'clock p.m. and six o'clock a.m., or upon Order of Execution issued by the South Carolina Supreme Court, the Defendant, Bobby Wayne Stone, shall suffer death by electrocution or by lethal injection in the manner provided by law.


Howard P. King
Resident Judge
Third Judicial Circuit

Sumter, SC
February 27, 2005

STATE OF SOUTH CAROLINA

CERTIFIED TRUE COPY
OF ORIGINAL FILED

In the Court of General Sessions

COUNTY OF SUMTER

Anna M. Prescott
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

Case Number: 96-GS-43-698

State of South Carolina

v.

Bobby Wayne Stone,

Defendant.

**AFFIRMATION OF
DEATH SENTENCE**

As the Trial Judge in the above-entitled action, and prior to the imposition of the death sentence upon the Defendant, Bobby Wayne Stone, I find as an affirmative fact that the evidence of the case warrants the imposition of the death penalty and its imposition is not a result of prejudice, passion, or any arbitrary factor.

Howard P. King
Howard P. King
Resident Judge
Third Judicial Circuit

Sumter, SC
February 27, 2005

CERTIFIED TRUE COPY
OF ORIGINAL FILED
STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
DEPUTY CLERK OF COURT)
SUMTER COUNTY)
SOUTH CAROLINA)

In the Court of General Sessions
Case Number: 96-GS-43-698

State of South Carolina)

v.)

Bobby Wayne Stone,)

Defendant.)

STATUTORY INSTRUCTIONS

In determining whether to recommend that the Defendant, Bobby Wayne Stone, be sentenced by the Court to Life Imprisonment without the chance of parole or to Death, you may consider the following Statutory AGGRAVATING CIRCUMSTANCES:

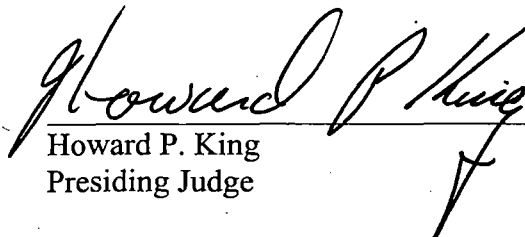
- 1) The murder was committed while in the commission of a burglary in any degree.
- 2) The murder was of a local law enforcement officer during or because of the performance of his official duties.

You may also consider the following Statutory MITIGATING CIRCUMSTANCES:

- 1) The murder was committed while the defendant was under the influence of mental or emotional disturbance.
- 2) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.
- 3) The age or mentality of the defendant at the time of the crime.

You may also consider any Non-Statutory MITIGATING CIRCUMSTANCES.

Sumter, SC
February 27, 2005


Howard P. King
Presiding Judge

1

Shirley H. Benjamin

~~Edna H. P. P.~~

Eugene B. B. B.

~~Robert C. C. C.~~

Baron D. D. D.

Carla F. F. F.

Emerenciana J. J. J.

Sandra Blamfelt

Anna M. M. M.

Randy E. E. E.

~~John D. D. D.~~

Sumter, SC
February 27, 2005

JACK D. HOWLE, JR.
JAMES H. BABB

HOWLE & BABB, L.L.P.
ATTORNEYS AT LAW
7 EAST HAMPTON AVENUE
P.O. BOX 2685
SUMTER, SOUTH CAROLINA 29151

OFFICE: (803) 775-3060
MOBILE: (803) 468-0123
FACSIMILE: (803) 775-6727
RESIDENCE: (803) 481-0123
EMERGENCY: (803) 436-5719

March 2, 2005

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211-1330

RE: In the matter of Stone
Case No.: 96-GS-43-698

Dear Mr. Shearouse:

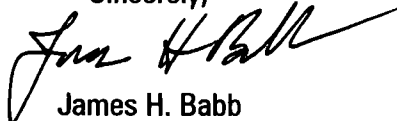
Please find enclosed for filing a Notice of Appeal in the above case. Also enclosed are the following:

- a.) Proof of Service of the Notice of Appeal on the Respondent.
- b.) A copy of the written orders which are to be challenged on appeal.

This appeal is being filed with the Supreme Court because it involves, inter alia, a challenge on state and federal grounds as to the constitutionality of a state law. This being a criminal matter in which the appellant has been determined to be indigent, no filing fee is being remitted. Additionally, I am turning over responsibility for further processing of the appeal to the South Carolina Office of Appellate Defense.

Should you or your office have any questions or require additional information, please contact me at your earliest convenience. With kindest regards,

Sincerely,


James H. Babb
ATTORNEY FOR APPELLANT

JHB/css
Enclosures

cc Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, South Carolina 29201

Kelly Jackson, Esq., Solicitor

Mr. Bobby Wayne Stone, Appellant