

Melissa J. Armstrong, Esquire
1400 Laurel Street, Ste. 4
Columbia, S.C. 29201
(803) 765-2796.

↓ 2001-021895
OP 25786

November 15, 2011

RECEIVED

NOV 16 2011

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

S.C. Supreme Court

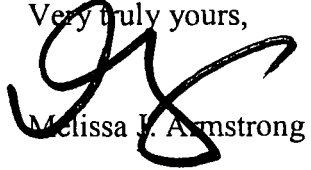
Re: Richard B. Moore v. State, 04-CP-42-2715

Dear Mr. Shearouse:

I am writing to update the court on the status of the above-referenced capital post-conviction relief case. This case was denied and dismissed and is now being handled by the South Carolina Office of Appellate Defense.

Should the Court have any questions concerning this case, please do not hesitate to contact me.

Very truly yours,



Melissa J. Armstrong

cc: Anthony J. Marby, Esquire
Wm. Edgar Salter, Esquire

Melissa J. Kimbrough, Esquire
1830 Marion Street
Columbia, S.C. 29201

(803) 765-2796 (telephone); (803) 467-4541 (mobile); (803) 765-2750 (fax)

May 6, 2009

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

RECEIVED

MAY - 6 2009

S.C. SUPREME COURT

Re: State v. Richard Bernard Moore
~~State v. Charles E. Shuler~~

Dear Mr. Shearouse:

I am writing in reply to this Court's request for a status update on the above-referenced pending capital post-conviction relief cases.

Yesterday, Monday, May 5, 2009, a status conference concerning Richard Moore was held before the Honorable Larry R. Patterson, and the parties agreed to try this matter in August, 2009.

A post-conviction relief hearing has already been held in Charles Shulers' case, the Honorable Casey L. Manning, presiding. During the hearing, counsel for applicant moved the court to conduct an *in camera* review of the solicitor's file. This motion was granted. For reasons that are unclear, it is my recollection that it took some time for the file to be produced, but I believe it is now in the trial judge's possession for his review. At some point after the hearing, the assigned attorney for respondent changed jobs and the case had to be reassigned. On April 17, 2009, new counsel for Respondent, Anthony Mabry, requested a status conference. As an officer of the court, undersigned counsel for the applicant, I am advising this Court that I will on today's date contact the trial judge and ask for a status conference date.

Should this Court have any questions concerning either of these cases, please do not hesitate to contact me at my **new address** and/or by telephone.

Very truly yours,

Melissa J. Kimbrough

MJK/me

cc: Wm. Edgar Salter, Esquire
Anthony Mabry, Esquire
Jim Brown, Esquire
James M. Morton, Esquire



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 1, 2009

James M. Morton, Esquire
Morton & Gettys, LLC
P.O. Box 707
Rock Hill, SC 29731

Melissa J. Kimbrough, Esquire
Law Office of Melissa Kimbrough
1338 Pickens St
Columbia, SC 29201-3430

Re: Richard Bernard Moore v. State

Dear Counsel:

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 2004-CP-42-2715. 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.

James M. Morton, Esquire
Melissa J. Kimbrough, Esquire
Page Two
May 1, 2009

Very truly yours,

David L. Shearouse
BS

CLERK

DES/dmh

cc: Senior Assistant Attorney General William Edgar Salter, III
The Honorable Larry Patterson

Melissa J. Kimbrough

ATTORNEY AT LAW

November 10, 2005

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

Re: *Charles O. Shuler v. State*
David Mark Hill v. State
✓ *Richard Bernard Moore v. State*

Dear Mr. Shearouse:

I am writing to provide a status update on the above-referenced case to which I have been appointed as first chair counsel.

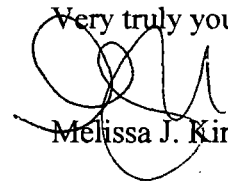
Charles Shuler's case is scheduled for a post-conviction relief hearing on February 20, 2006.

David Mark Hill's case is under investigation and Respondent has requested a status conference.

Richard Bernard Moore's case is under investigation, a pending funding motion is before the Court, and Respondent has requested a status conference.

If you have any questions concerning these matters, please feel free to contact me.

Very truly yours,



Melissa J. Kimbrough

/mk

cc: Derrick MacFarland, Esquire, S.C. Office of Attorney General
W. Ed Salter, Esquire, S.C. Office of Attorney General
Melody Jane Brown, Esquire, S.C. Office of Attorney General

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NOV 14 2005

S.C. SUPREME COURT

Melissa J. Kimbrough, Esquire
1811 Pickens Street
Columbia, S.C. 29201
(803) 765-2796

October 20, 2006

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

Re: David Mark Hill, 05-CP-02-871
✓Richard B. Moore, 04-CP-42-2715
Charles O. Shuler, 03-CP-38-03

Dear Mr. Shearouse:

I am writing to update the court on the status of the above-referenced pending capital post-conviction relief cases.

David Mark Hill's case is pending an amended scheduling order, with the applicant requesting a hearing date in late spring/early summer 2007.

Richard B. Moore's case is being set for hearing sometime in May, 2007. Counsel is awaiting notification from Court Administration for an exact date.

Charles O. Shuler's case was tried July 10-14, 2006.

Should the Court have any questions concerning these cases, please do not hesitate to contact me.

Very truly yours,



Melissa J. Kimbrough

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cc: Ed Salter, Esquire
Derrick McFarland, Esquire
Melody Brown, Esquire
Jim Brown, Esquire
James Morton, Esquire
David Miller, Esquire

OCT 23 2006
S.C. SUPREME COURT

Melissa J. Kimbrough

ATTORNEY AT LAW

September 8, 2005

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

Re: *Richard Bernard Moore v. State of South Carolina,*

Dear Mr. Shearouse:

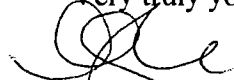
Pursuant to *In Re Stays of Execution in Capital Cases*, 471 S.E.2d 140 (S.C. 1996), I am writing to advise the Court of the status of the above-captioned capital post-conviction relief cases to which I have been appointed as lead counsel.

Richard Bernard Moore has applied to the Court for funding to begin investigation in his case.

I will file another status reporter with Court Administration in sixty days from today's date, on November 7, 2005.

Please feel free to contact me with any questions.

Very truly yours,



Melissa J. Kimbrough

/mk

cc: Ed Salter, Sr. Asst. Attorney General
Kathrine Hudgins, Esquire

RECEIVED

SEP 09 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 7, 2004

Acting Chief Attorney Joseph L. Savitz, III
Office of Appellate Defense
1205 Pendleton Street, Rm. 306
Columbia, SC 29201

Re: The State v. Moore, Richard Bernard

Dear Counsel:

Enclosed is the order issued in the above entitled matter.

Very truly yours,

CLERK

DES/dmh

Enclosure

cc: Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General William Edgar Salter, III
The Honorable Harold W. Gowdy, III
The Honorable Marcus W. Kitchens
The Honorable Larry R. Patterson
Motte L. Talley, Esquire

The Supreme Court of South Carolina

The State,

Respondent,

v.

Richard Bernard Moore,

Appellant.

ORDER


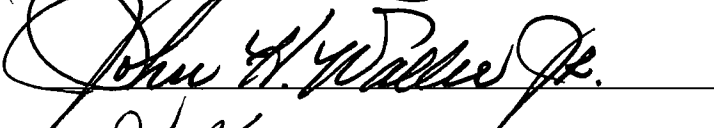


Appellant was convicted of murder, armed robbery, assault with intent to kill, and possession of a firearm during the commission of a violent crime. He was sentenced to death, thirty years, ten years and five years, respectively. This Court affirmed his convictions and sentences. State v. Moore, Op. No. 25786 (S.C. Sup. Ct. filed March 1, 2004). Appellant now seeks a stay of execution in order to pursue post-conviction relief (PCR).

Appellant's request for a stay of execution is granted. This stay shall remain in effect to the extent provided by this Court in In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996).

The Honorable Larry R. Patterson is hereby assigned to the post-conviction relief action that appellant proposes to file. The judge shall retain jurisdiction over the case regardless of where he may be assigned to hold

court, and he may schedule necessary hearings at any time without regard to whether there is a term of court scheduled. The judge shall conduct a hearing on appellant's desires regarding counsel within thirty (30) days of the date of this order.

IT IS SO ORDERED.

 C. J.
 J.
 J.
 J.

Moore, J., not participating.

Columbia, South Carolina

April 7, 2004

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Gary E. Clary, Judge

THE STATE,

RESPONDENT,

V.

RICHARD BERNARD MOORE,

APPELLANT

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2004 MAR 16 PM 4:35
SC SUPREME COURT

PETITION FOR STAY OF EXECUTION

Counsel for Richard Bernard Moore petitions the Court for a stay of execution to allow Mr. Moore to pursue post-conviction relief.

The Court's order captioned Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140, 141 (1996), states:

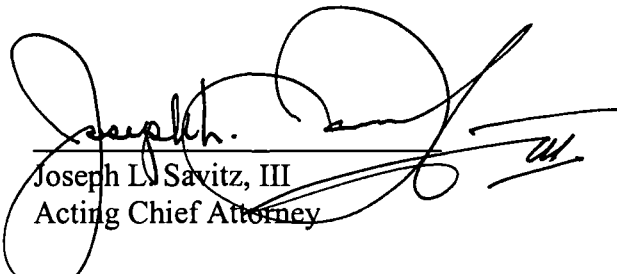
If the defendant desires a stay to pursue state post-conviction relief, the defendant must... file a motion to stay with this Court, setting forth the issues intended to be raised in the application for post-conviction relief. This Court will assign a circuit judge to the case and issue a stay of execution.

At a minimum, Mr. Moore will allege on post-conviction that he did not receive effective

assistance of counsel because counsel failed to request an instruction on self-defense and, at sentencing, failed to proffer the substance of Moore's intended closing argument: specifically, his remorse for the victim's death.

WHEREFORE, counsel petitions the Court for a stay of execution to allow Richard Bernard Moore to pursue post-conviction relief.

Respectfully submitted,



Joseph L. Savitz, III
Acting Chief Attorney
Attorney for Appellant

This 16th day of March, 2004

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Gary E. Clary, Judge

THE STATE,

RESPONDENT,

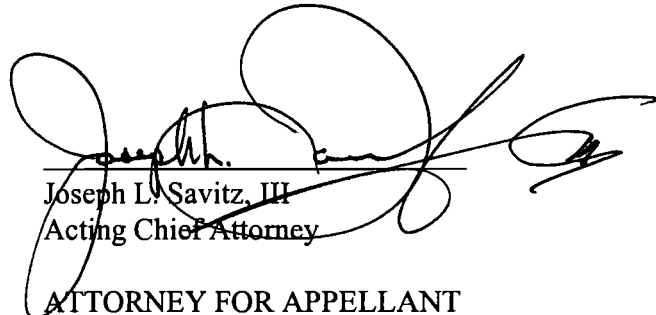
V.

RICHARD BERNARD MOORE,

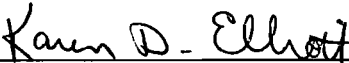
APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the petition for stay of execution in the above entitled case has been served upon William Edgar Salter, III, this 16th day of March, 2004.


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

SWORN TO BEFORE ME this 16th day
of March, 2004.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007



RECEIVED

04 MAR 25 AM 9:55

SC SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 25, 2004

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

RE: State v. Richard Bernard Moore, #6003
Indictment Nos. 2000-GS-42-0617, 2000-GS-42-0619 and
2001-GS-42-2460

Dear Mr. Shearouse:

Please accept this letter in lieu of a formal return to Mr. Moore's Petition for Stay of Execution. Respondent does not oppose the stay request because Mr. Moore has yet to exhaust state post-conviction relief remedies. If you have any questions concerning the case, please feel free to call me.

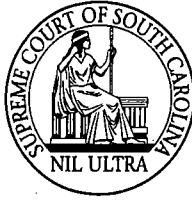
Sincerely,

A handwritten signature in black ink, appearing to read "W. Edgar Salter, III".

William Edgar Salter, III
Senior Assistant Attorney General

WES,III/lb

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



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 18, 2004

REMITTITUR

The Honorable Marcus W. Kitchens
Clerk of Court, Spartanburg County
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: The State v. Moore, Richard Bernard
2000-GS-42-0617, 2000-GS-42-0619 and 2001-GS-42-2460

Dear Mr. Kitchens:

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

Very truly yours,

CLERK

DES/dmh

Enclosure

cc: Deputy Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General William Edgar Salter, III
The Honorable Harold W. Gowdy, III

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State,

Respondent,

v.

Richard Bernard Moore,

Appellant.

Appeal From Spartanburg County
Gary E. Clary, Circuit Court Judge

Opinion No. 25786
Heard January 7, 2004 - Filed March 1, 2004

AFFIRMED

Deputy Chief Attorney Joseph L. Savitz, III, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Attorney General William Edgar Salter, III, all of
Columbia, and Solicitor Harold W. Gowdy, III, of
Spartanburg, for Respondents.

JUSTICE WALLER: Appellant, Richard Benjamin Moore, was convicted of murder, armed robbery, assault with intent to kill, and possession of a firearm during commission of a violent crime; he was respectively sentenced to death, thirty years, ten years and five years. This

appeal combines his direct appeal with this Court's mandatory sentencing review pursuant to S.C. Code Ann. § 16-3-25 (1985). We affirm the convictions and sentences.

FACTS

The charges in this case stem from the September 16, 1999, armed robbery of Nikki's, a convenience store on Highway 221 in Spartanburg. According to Terry Hadden, an eyewitness, Moore walked into Nikki's at approximately 3:00a.m. and walked toward the cooler. Hadden was playing a video poker machine, which he did routinely after working his second shift job. Hadden heard Jamie Mahoney, the store clerk, yell, "What the hell do you think you're doing?" Hadden turned from the poker machine to see Moore holding both of Mahoney's hands with one of his hands. Moore turned towards Hadden, pointed a gun at him, and told him not to move. Moore shot at Hadden, and Hadden fell to the floor and pretended to be dead. After several more shots were fired, Hadden heard the doorbell to the store ring. He heard Moore's pickup truck and saw him drive off on Highway 221. Hadden got up and saw Mahoney lying face down, with a gun about two inches from his hand; he then called 911. Mahoney died within minutes from a gunshot wound through his heart. A money bag with \$1408.00 was stolen from the store.

Shortly after the incident, Deputy Bobby Rollins patrolled the vicinity looking for the perpetrator of the crime. Approximately one and one-half miles from the convenience store, Deputy Rollins took a right onto Hillside drive, where he heard a loud bang, the sound of Moore's truck backing into a telephone pole. He turned his lights and saw Moore sitting in the back of a pickup truck bleeding profusely from his left arm. As Deputy Rollins ordered him to the ground, Moore advised him, "I did it. I did it. I give up. I give up." A blood covered money bag was recovered from the front seat of Moore's pick-up truck. The murder weapon, a .45 caliber automatic pistol, was found on a nearby highway shortly before daylight.

Moore was tried for the crimes in October 2001. The jury convicted him of all counts. In a separate sentencing proceeding, the jury recommended a sentence of death.

ISSUES

1. Did the trial court err in limiting the scope of Moore's closing argument to the guilt phase jury?
2. Did the trial court err in limiting the scope of Moore's closing argument to the sentencing phase jury?

1. GUILT PHASE CLOSING

Moore contends he should have been permitted to argue, to the guilt phase jury, that he was on trial for his life, and that his life was in jeopardy. We disagree.

Prior to the opening statements of counsel in this case, the trial court advised the jury that this was a death penalty trial which would be bifurcated into two parts. The jury was advised that a separate sentencing would be held if and only if the defendant were convicted of murder. The trial court went on to specifically advise the jury that **"the purpose of my telling you this is to emphasize that you are not to consider punishment or sentence at this phase of the case. You are only to determine the innocence or guilt of the defendant based upon the evidence that will be introduced in the trial of the case."**

Moore did not testify at the guilt phase of trial, but did elect to personally address the jury, pursuant to S.C.Code Ann. § 16-3-28 (1985 & Supp. 2002).¹ Moore advised the jury that he was nervous and didn't know what to say. He then stated, "All I know is my life is in jeopardy here a second time." The state's objection was sustained and Moore was advised to "limit yourself to the testimony and evidence. . . they are to determine the guilt or innocence sir." Moore then proceeded, "The state is seeking the death penalty on me, which means my very life is at stake." The court once

¹ Pursuant to S.C. Code Ann § 16-3-28, "Notwithstanding any other provision of law, in any criminal trial where the maximum penalty is death or in a separate sentencing proceeding following such trial, the defendant and his counsel shall have the right to make the last argument."

again admonished Moore that the jury was simply determining guilt or innocence at this point and to limit himself to that. The court took a brief recess to allow Moore to speak with his attorney, after which the court advised him as follows:

Now, Mr. Moore, I want you to understand that you certainly have the right to make the closing argument to the jury. That's provided by for law. But, once again, you have to do it within the confines of the testimony and evidence that has been presented. You cannot go beyond that. You cannot, since you elected not to take the stand, you cannot testify. . . . You may not testify. You gave that right up. You can comment on the facts, what the evidence has revealed in this case. **Insofar as mentioning punishment, you are not to mention that, because we are not about that right now.** And if there are any violations of what I am laying out at this time, you are going to stand over here. Then I am going to stop your argument. And then we will proceed into the charge on the law.

(Emphasis supplied). Moore succinctly concluded his argument; the jury convicted him of all counts. Moore now asserts the trial court committed reversible error in precluding him from commenting on the fact that his life was at stake. We disagree.

We have previously recognized that a capital defendant's right to personally address the jury applies at both the guilt-or-innocence and sentencing phases of trial. State v. Hall, 312 S.C. 95, 439 S.E.2d 278 (1994); State v. Rodgers, 270 S.C. 285, 242 S.E.2d 215 (1978). However, we have not specifically addressed the parameters of that right, particularly as it pertains to the guilt phase of a capital trial. We find that allowing the defendant to stress to the jury that his life is at stake during the guilt phase of trial would mislead the jury to believe that it was permitted to consider punishment at the guilt phase of trial. This simply is not so; this phase of a capital trial is limited solely to the determination of guilt or innocence.

Our holding is consistent with our recent opinion in Franklin v. Catoe, 346 S.C. 563, 552 S.E.2d 718 (2001). In Franklin v. Catoe, *supra*, we found the defendant did not knowingly waive his statutory right to personally address the guilt phase jury. However, we found Franklin had demonstrated no prejudice from denial of this right, stating, “this error occurred during the guilt phase, where the jury is confined to determining whether Franklin committed the crime, not whether he deserved the death penalty. Had Franklin been apprised of his right to address the jury during closing, and had he chosen to do so, he would have been arguing for his innocence, not pleading for his life.” 346 S.C. at 573, 552 S.E.2d at 724. It is patent from this language in Franklin that a guilt phase closing argument pursuant to § 16-3-28 does not encompass the right to stress that the defendant is “on trial for his life.”

Further, as noted previously, the trial court here specifically instructed the jury that it was not permitted to consider punishment at the guilt-or-innocence stage, but that, if Moore were found guilty, there would be a second, sentencing phase of trial at which his punishment would be determined. We find the trial court properly limited Moore’s argument. See Hoeffner v. The Citadel, 311 S.C. 361, 429 S.E.2d 190 (1993) (noting that arguments which invite the jury to base its verdict on considerations not relevant to the merits of the case are improper); State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997) (trial judge is allowed discretion in dealing with the range and propriety of closing argument to the jury, and rulings on such matters will not be disturbed absent an abuse of discretion).

2. SENTENCING PHASE CLOSING

At the sentencing phase of trial, prior to closing arguments, the court advised Moore that he once again had the right to “have a closing argument regarding the sentence imposed. . . . and, once again, the statement that you would make to the jury would have to be confined to the evidence that has been presented and to the issues concerning the sentence imposed.” Moore advised the trial court that he would not address the sentencing phase jury.

Moore now asserts his waiver of the right to make a closing argument to the sentencing jury was involuntary due to the trial court’s admonition to

him that “once again, the statement that you would make to the jury would have to be confined to the evidence that has been presented and to the issues concerning the sentence imposed.” Essentially, Moore asserts this limitation prevented him the opportunity to make a closing argument asking for mercy and/or expressing feelings of remorse, such that his waiver of the right to address the sentencing phase jury was not knowing and voluntary.

This argument is procedurally barred. At trial, Moore did not assert that the trial judge’s comments prohibited him from asking for mercy and/or expressing feelings of remorse; he simply advised the court that he did not intend to address the sentencing phase jury. His failure to raise this contention to the trial judge precludes review of the issue on appeal. State v. Perez, 334 S.C. 563, 514 S.E.2d 754 (1999); State v. Williams, 303 S.C. 410, 401 S.E.2d 168 (1991)(issue must be raised to and ruled upon by trial judge to be preserved for appellate review).

Moreover, to the extent the trial court’s comment could feasibly be viewed as limiting Moore’s ability to express remorse to the sentencing phase jury, the matter is more appropriately addressed in a post conviction relief (PCR) action. As noted above, the only comment made by the trial court was that Moore could address the sentencing jury as to “the issues concerning the sentence to be imposed.” This statement arguably encompasses the right to argue remorse and mercy. There is no further explanation of what this sentence means, nor any objection to it. On the present record, it is simply impossible to determine precisely what the trial court meant by this statement, or what Moore understood it to mean. In the PCR context, however, a court could analyze all the facts surrounding the trial to determine if Moore knowingly and intelligently waived his rights under section 16-3-28. See Franklin v. Catoe, 346 S.C. 563, 552 S.E.2d 718 (2001)(noting that PCR process is specifically designed to allow for an inquiry into the relevant facts surrounding the adequacy of a defendant's information and/or waiver of rights). Accordingly, given the lack of objection and failure to raise the present issue at trial, Moore’s remedy, if any, is through PCR.

CONCLUSION

Moore's convictions and sentences are affirmed. The death sentence was not the result of passion, prejudice, or any other arbitrary factor, and the jury's finding of aggravating circumstances is supported by the evidence. Further, the death penalty is not excessive or disproportionate to the penalty imposed in similar capital cases. See State v. Simpson, 325 S.C. 37, 479 S.E.2d 57, *cert. denied*, 520 U.S. 1277 (1996); State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996), *cert. denied*, 520 U.S. 1123 (1997); State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991), *cert. denied*, 502 U.S. 1103 (1992); State v. Patterson, 285 S.C. 5, 327 S.E.2d 650 (1984), *cert. denied*, 471 U.S. 1036 (1985).

AFFIRMED.

**TOAL, C.J., BURNETT, PLEICONES, JJ., and Acting Justice
Thomas L. Hughston, Jr., concur.**

ORIGINAL

8

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
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

Wanda H. Haile
Senior Assistant Appellate Defender

November 5, 2003

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

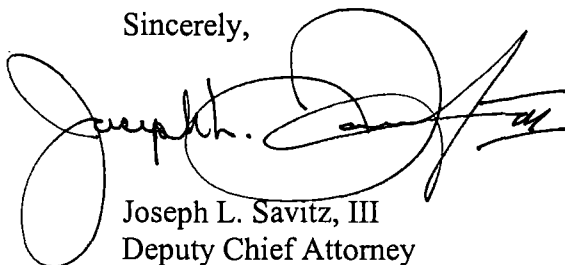
Re: The State v. Hastings Arthur Wise
The State v. Richard Bernard Moore

Dear Mr. Shearouse:

Arguments in the above death penalty cases are scheduled for the January 2004 term of Court. I am requesting that one of these cases be set for argument January 6-8 and the other one set for January 21 or 22.

If you have any questions or need additional information, please contact me. Thank you for your courtesy and cooperation.

Sincerely,



Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/kde

cc: S. Creighton Waters
William Edgar Salter, III



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: Deputy Chief Attorney Joseph L. Savitz, III
From: Daniel E. Shearouse
Date: November 04, 2003
RE: January 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 January 2004 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 January 6, 7, 8, 21 and 22, 2004. Please notify this office in writing prior to November 12, 2003 as to any scheduling conflicts for the January 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. Moore, Richard Bernard



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
Senior Assistant Attorney General William Edgar Salter, III

From: Daniel E. Shearouse

Date: November 04, 2003

RE: January 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 January 2004 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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The State v. Moore, Richard Bernard



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: Harold W. Gowdy, III, Esquire
From: Daniel E. Shearouse
Date: November 04, 2003
RE: January 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 January 2004 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 January 6, 7, 8, 21 and 22, 2004. Please notify this office in writing prior to November 12, 2003 as to any scheduling conflicts for the January 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. Moore, Richard Bernard

The Supreme Court of South Carolina

The State,

Respondent

v.

Richard Bernard Moore,

Appellant.

The Honorable Gary E. Clary
Spartanburg County
Trial Court Case No. 2000-GS-42-0617
2000-GS-42-0619
2001-GS-42-2460

ORDER

For good cause having been shown, the time for serving and filing the final brief of appellant in the above entitled matter is hereby extended until October 16, 2003.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

September 17, 2003

cc: Deputy Chief Attorney Joseph L. Savitz, III
Senior Assistant Attorney General William Edgar Salter, III

ORIGINAL

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
Senior Assistant Appellate Defender

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

September 16, 2003

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

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2003 SEP 16 PM 4: 21
SC SUPREME COURT

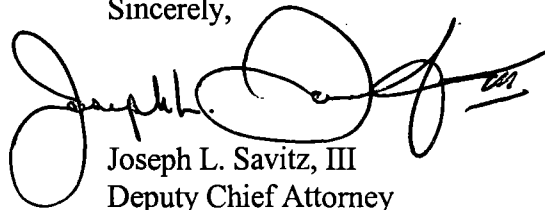
Re: The State v. Richard Bernard Moore

Dear Mr. Shearouse:

The final brief of appellant in this case is 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 October 16, 2003 in which to serve and file the brief.

By copy of this letter, I am informing William Edgar Salter, III, of the Attorney General's Office, of my request.

Sincerely,



Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/mwl

cc: William Edgar Salter, III, Esquire



RECEIVED

SEP 15 11 37

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

SC SUPREME COURT

HENRY McMASTER
ATTORNEY GENERAL

September 15, 2003

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

Re: The State v. Richard Bernard Moore

Dear Mr. Shearouse:

Enclosed for filing please find the original and nine copies of the Final Brief of Respondent, along with proof of service, in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Edgar Salter, III".

William Edgar Salter, III
Senior Assistant Attorney General

WES,III/

Enclosures

cc: Joseph L. Savitz, III, Esquire (3 copies enclosed)
The Honorable Trey Gowdy, III (copy enclosed)
Ms. Sandi Wofford, Victim Services (2 copies enclosed)

STATE OF SOUTH CAROLINA

RECEIVED

ORIGINAL

IN THE SUPREME COURT

2003 AUG 27 PM 1:33

Appeal from Spartanburg County SC SUPREME COURT

Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

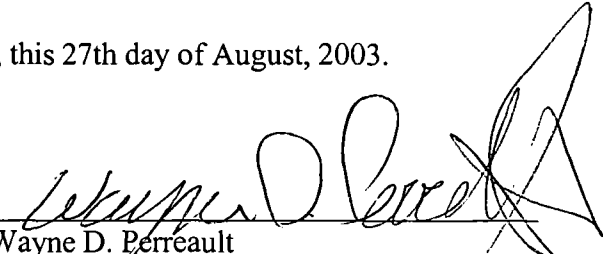
V.

RICHARD BERNARD MOORE,


APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon William Edgar Salter, III, Esquire, this 27th day of August, 2003.


Wayne D. Perreault
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 27th day of August, 2003.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007.

D

The Supreme Court of South Carolina

The State,

Respondent

v.

Richard Bernard Moore,

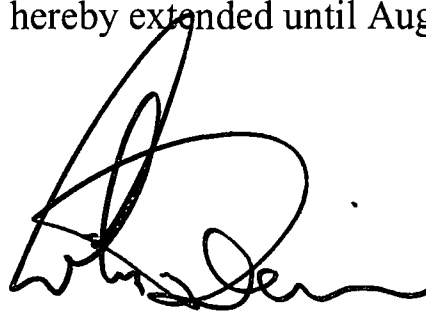
Appellant.

The Honorable Gary E. Clary
Spartanburg County
Trial Court Case No. 2000-GS-42-0617
2000-GS-42-0619
2001-GS-42-2460

ORDER

For good cause having been shown, the time for filing the record on appeal in the above entitled matter is hereby extended until August 27, 2003.

IT IS SO ORDERED.



J.

For the Court

Columbia, South Carolina

July 29, 2003

cc: Deputy Chief Attorney Joseph L. Savitz, III
Senior Assistant Attorney General William Edgar Salter, III

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Gary E. Clary, Circuit Court Judge

RECEIVED
2003 JUL 23 PM 4: 14
SC SUPREME COURT

THE STATE,

RESPONDENT,

V.

RICHARD BERNARD MOORE,

APPELLANT

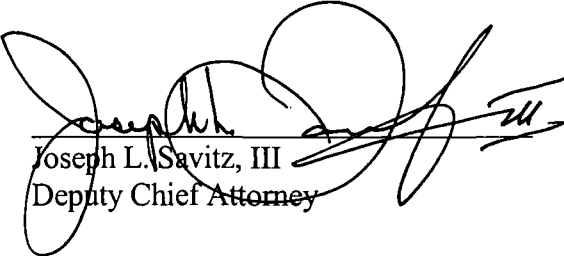
MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE RECORD ON APPEAL

Counsel for Richard Bernard Moore respectfully requests an additional thirty days (until August 27) in which to file the record on appeal in this death penalty case. Counsel has previously received a thirty-day extension in connection with this step in the process. Counsel for the state does not object to this request, as indicated by his signature below.

Administrative exigencies and heavy caseload have prevented counsel from putting the record together in this case. Counsel makes this request in good faith and not for purposes of delay.

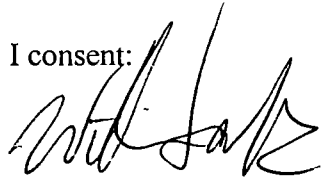
Therefore, counsel requests an additional thirty days (until August 27) in which to file the record on appeal in this case.

Respectfully submitted,


Joseph L. Savitz, III
Deputy Chief Attorney
Attorney for Appellant

This 28th day of July, 2003

I consent:



William Edgar Salter, III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

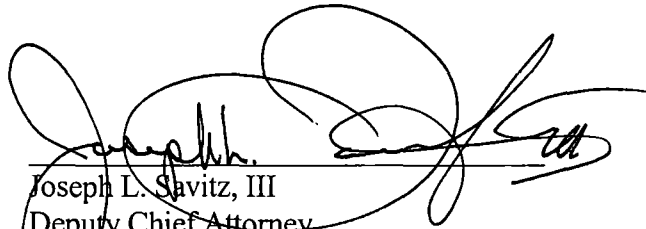
V.

RICHARD BERNARD MOORE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the motion for an extension of time in the above referenced case has been served upon opposing counsel, William Edgar Salter, III, this 28th day of July, 2003.


Joseph L. Savitz, III
Deputy Chief Attorney
Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 28th day of July, 2003.

Karen 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.

Richard Bernard Moore,

Appellant.

The Honorable Gary E. Clary
Spartanburg County
Trial Court Case No. 2000-GS-42-0617
2000-GS-42-0619
2001-GS-42-2460

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 July 28, 2003.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY


CLERK

Columbia, South Carolina

June 30, 2003

cc: Deputy Chief Attorney Joseph L. Savitz, III
Senior Assistant Attorney General William Edgar Salter, III

ORIGINAL

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243

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

June 27, 2003

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

Re: State v. Richard Bernard Moore

Dear Mr. Shearouse:

The record on appeal in this capital case is due to be served and filed with the Court today. However, because of my heavy caseload, the record was not put together in time for filing. Therefore, I am requesting an extension until July 28, 2003, in which to serve and file the record.

By copy of this letter, I am informing William Edgar Salter, III, of the Attorney General's Office, of my request.

Sincerely,



Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/kde

cc: William Edgar Salter, III

RECEIVED
2003 JUN 27 PM 4:17
SC SUPREME COURT



RECEIVED

2003 MAY 28 PM 4:39

SC SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

May 28, 2003

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

Re: The State v. Richard Bernard Moore

Dear Mr. Shearouse:

Enclosed for filing please find the original of the Initial Brief of Respondent and Designation of Matter, along with proof of service, in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Will Salter".

William Edgar Salter, III
Senior Assistant Attorney General

WES,III/

Enclosures

cc: Joseph L. Savitz, III, Esquire (2 copies enclosed)
The Honorable Trey Gowdy, III (copy enclosed)
Ms. Sandi Wofford, Victim Services (2 copies enclosed)

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

2003 MAY 28 PM 4: 41

SC SUPREME COURT

Appeal From Spartanburg County
The Honorable Gary E. Clary, Circuit Court Judge

THE STATE,

Respondent,

vs.

RICHARD BERNARD MOORE,

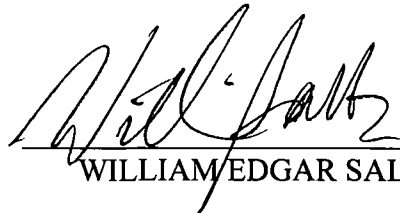
Appellant.

PROOF OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Joseph L. Savitz, III, Deputy Chief Attorney, South Carolina Office of Appellate Defense, 1122 Lady Street, Suite 940, Columbia, South Carolina 29201.

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

This 28th day of May, 2003.



WILLIAM EDGAR SALTER, III

Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

RECEIVED

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

2003 MAY 28 PM 4:39

SC SUPREME COURT

Appeal From Spartanburg County

The Honorable Gary E. Clary, Circuit Court Judge

THE STATE,

Respondent,

vs.

RICHARD BERNARD MOORE,

Appellant.

INITIAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

TREY GOWDY, III
Solicitor, Seventh Judicial Circuit

180 Magnolia Street, Third Floor
Spartanburg, South Carolina 29306-2335
(864) 596-2575

ATTORNEYS FOR RESPONDENT.

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STATEMENT OF ISSUES ON APPEAL

I.

The trial judge did not abuse his discretion by ruling that Appellant could not argue “my very life is at stake” in his guilt phase closing argument because Appellant’s argument was not relevant to the question of his guilt or innocence, which was the only question before the guilt phase jury.

II.

Appellant’s complaints about the trial judge’s conduct of the on-the-record waiver of Appellant’s right to make a closing argument in the sentencing phase is not properly before the Court because there was no objection at trial.

STATEMENT OF THE CASE

The Spartanburg County Grand Jury indicted Appellant at the January 2000 term of court for murder, assault with intent to kill (AWIK), armed robbery and possession of a firearm during the commission of a violent crime. (00-GS-42-617 through -619). The State thereafter served notice of its intention to seek the death penalty. The Spartanburg County Grand Jury handed down another armed robbery indictment at the October 2001 term of court. Appellant was represented in the lower court by Michael David Morin, Ralph Keith Kelly and Jennifer Johnson, Esquires. The prosecution was represented by Seventh Circuit Solicitor Harold W. Gowdy, III, and Assistant Solicitors James Donald Willingham, II, and Barry J. Barnette.

The Honorable Gary E. Clary held motions hearings in the case on April 3, September 28, and October 15, 2001. On October 16-22, 2001, Appellant received a capital jury trial pursuant to S.C. Code Ann. § 16-3-20 (Supp. 2002). The jury convicted him of each of the indicted offenses.

Following Appellant's exercise of the twenty-four hour waiting period in § 16-3-20(B), a sentencing proceeding was conducted in front of the same jury. The prosecution relied upon the statutory aggravating circumstances that the murder was committed while in the commission of robbery while armed with a deadly weapon; that Appellant, by his act of murder, had knowingly created a risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person; and that Appellant had committed the murder for the purpose of receiving money

or a thing of monetary value. § 16-3-20(C)(a)(1), (3)-(4), (D). Judge Clary submitted the statutory mitigating circumstances found in § 16-3-20(C)(b)(2), (6)-(7).

The jury found the existence of each of the statutory aggravating circumstances alleged by the prosecution and sentenced Appellant to death. Judge Clary imposed the sentence of death for murder and sentenced Appellant to five years for the weapons charge, ten years for AWIK and thirty years for armed robbery.

A timely Notice of Appeal was served and filed. This appeal follows.

STATEMENT OF FACTS

The present crime further illustrates the evils of crack cocaine and the problems it has caused in our society. Sometime between 8:00 and 10:00 p.m. on September 15, 1999, Appellant went to the residence of George Gibson, on Hillside Drive in Whitney, S.C. ¹ He asked Gibson to get him some crack cocaine. Gibson refused because Appellant did not have any money. Gibson also told Appellant that he could not get the crack for Appellant on credit. Appellant, who was unemployed at the time, told Gibson he was going to work and would return the following morning. Then, he left. **Tr. pp. 1245-48; 1253; 1255; 1371-72.**

Meanwhile, Mr. James Mahoney (the murder victim) was working the third shift at Nikki's Speedy Mart, a restaurant-convenience store located at the corner of Highway 221 and California Avenue in Whitney, South Carolina. He had been employed there for over three years. The owner of Nikki's kept a .32 caliber pistol and a .45 caliber semi-automatic pistol (**State's Exhibit 3**) in the store for protection.² Also, Mr. Mahoney carried a .44 caliber handgun (**State's Exhibit 1**) in his waistband for protection. However, his hands were ravaged by arthritis and he was of slight build. (He was between 5' 7" and 5' 9" tall and weighed approximately 145 pounds). Also, none of his co-workers or friends had seen him ever be physically aggressive towards anyone in Nikki's. **Tr. pp. 1195-96; 1346-57; 1361-63; 1366-70; 1489.**

¹ Gibson knew Appellant as "Mo." **Tr. p. 1246.** Also, all locations referred to in this brief are in Spartanburg County unless otherwise specified.

² Neither of the weapons were visible to customers: the .45 was kept under a towel by the cash register and the .32 was kept under the counter.

Terry Hadden (the AWIK victim) was a regular customer at Nikki's, who stopped in to eat around 12:15 a.m. on September 16, 1999.³ After eating and talking to Mr. Mahoney for awhile, he began playing video poker around 1:00 a.m. The store was busy for a short period, but the early morning hours remained relatively uneventful until Appellant walked into the store shortly after 3:00 a.m.⁴ Mr. Hadden and Appellant glanced at each other briefly when Appellant first entered. Then, Mr. Hadden turned around and continued playing video poker. Appellant went to a cooler and, apparently, retrieved two cans of beer. See Tr. pp. 1193-1205; 1309.

The next thing I know of anything going on in the store is when I heard Jamie [Mahoney] say, 'What the hell do you think you are doing?' . . . in a loud tone of voice.

Tr. p. 1205, ll. 9-14. Once Mr. Hadden heard this comment, he swivelled around in his chair and saw Appellant holding both of Mr. Mahoney's hands in one of Appellant's hands. Appellant immediately "come around and come up with a gun and told me not to move." Without giving Mr. Hadden an opportunity to comply with his directions, Appellant fired the .45 caliber semi-automatic (**State's Exhibit 3**), which he had taken from the victim's constructive possession, at him. Mr. Hadden instantly fell to the floor and played dead. He then heard a number of gunshots but did not count how many had been fired. **Tr. pp. 1204-09; 1215-17; 1288-89; 1424.**

³ Mr. Hadden worked the second shift at Wise Snacks Company. **Tr. pp. 1193-94; 1196.**

⁴ Mr. Mahoney had a brief rush of customers around 1:15 a.m. and later he loaned his lug wrench to an African-American customer who had trouble with his tire in the parking lot. However, it does not appear that anyone came into Nikki's between the time that man left and Appellant arrived. **Tr. pp. 1202-04.**

In the shooting which followed, at least one shot mortally wounded the victim. The pathologist explained that Mr. Mahoney had a gunshot wound which “passed through the lower border of the eighth rib” before going through his liver, through and through his stomach, through and through his diaphragm, through and through his heart and his left lung. It then exited Mr. Mahoney’s right chest. Mr. Mahoney also had a gunshot wound to his lower right arm, which broke his right arm. **Tr. pp. 1491-1502.**

The pathologist opined that it is possible that either there were two gunshot wounds or all of Mr. Mahoney’s injuries could have been caused by a single gunshot if his body had been positioned in a manner in which that could have occurred. He died from internal hemorrhaging caused by the wound to his torso and would have died within six to ten minutes after receiving this wound. **Tr. pp. 1491-1502.** A bullet from Mr. Mahoney’s .44 caliber weapon went through Appellant’s left arm. **Tr. pp. 1380-84.**

Mr. Hadden continued to play dead until he heard Appellant say, “Let’s get the hell out of here” and exit the store.⁵ Mr. Hadden ran out of the building after he heard Appellant’s vehicle leave. He then went back into the store, saw that his friend was dead and called 911. **Tr. pp. 1205-13.**

Appellant took a money bag containing \$1,408.00 and immediately drove his pickup truck to Gibson’s house. Along the way, he discarded the .45 caliber handgun which had his blood on it. **Tr. pp. 1211; 1262-64; 1267; 1312-13; 1352-54; 1466-69; 1478.** When he

⁵ Appellant asserts that he only shot the victim after the victim first shot him through the left arm. However, the record does not indicate whether the victim shot him first, whether they shot at each other simultaneously or whether the victim shot him immediately after having been shot himself. Mr. Hadden clearly testified that he was playing dead after the first shot and Appellant did not testify in either phase of his trial. As with his arguments, his assertion in this regard is mere conjecture and speculation.

reached Gibson's, he asked for Gibson to get him some crack. Gibson refused because of the late hour. During their conversation, Appellant told Gibson, "I done something bad, and I got to go turn myself in, and I got money." **Tr. pp. 1248-49.**

Appellant was obviously bleeding and Gibson asked him what had occurred. Appellant told him that he had been shot, and he asked Gibson to take him to the emergency room. Gibson refused because he did not want to become involved. When Appellant tried to back his truck out of Gibson's driveway, he struck a telephone pole. **Tr. pp. 1249-50; 1256-57.**

Coincidentally, Spartanburg County Deputy Sheriff Bobby Rollins was searching for "a black male, possibly injured, driving a loud vehicle" since this was the description of the suspect he had received. He passed by as Appellant backed into the telephone pole. Therefore, he quickly turned his car around, "threw all of my light in that general area" and exited his vehicle with his weapon drawn. **Tr. pp. 1234-38.**

Appellant approached Deputy Rollins with his hands in the air and "bleeding profusely" from his left arm. The whole time Appellant was complying with Deputy Rollins' instructions to get on the ground, he repeatedly said, "I did it, I did it, I give up, I give up." A search of his truck resulted in the seizure of the stolen money and an open pocketknife. They found Appellant's wallet in the roadway and the bloody shirt Appellant had been wearing near Gibson's residence. **Tr. pp. 1238-40; 1311-18.** At the hospital, Appellant told the emergency room nurse that he was using alcohol and cocaine. **Tr. pp. 1377-78.**

The forensic investigator who first responded to the crime scene at Nikki's found the victim lying in the kitchen floor. He was deceased and his right arm was bent at such a peculiar angle it was clear that it was broken. In addition to finding evidence of the victim's blood, Appellant's blood was found across the back of the victim's clothing and a trail of his blood led out the front door. Also, a meat cleaver, which did not belong to Nikki's Speed Shop (**State's Exhibit 83**), was found at the victim's feet with Appellant's blood on it. **Tr. pp. 1271-93; 1305-10; 1352-53; 1364-65; 1368; 1421-32.** Additionally, there were six shell casings, two lead bullet cores and two fired bullets which had been fired by the .45 automatic, as well as several fragments which were consistent with having been fired by it.

Appellant mistakenly asserts that his crimes of September 16, 1999, were not "premeditated." However, for a defendant to be guilty of murder, the State must prove only that he acted with malice aforethought at the time of the unlawful killing. There cannot be any serious contention that the prosecution failed to do so in this case and Appellant has not raised any issue on appeal concerning the sufficiency of the State's evidence. Further, a reasonable inference from the presence of the cleaver at the store and the opened pocket knife is that Appellant may have very well been armed before he entered the store. In any event, his crimes were certainly premeditated by the time he fired at Mr. Hadden, who was unarmed and had not spoken to him.

In the penalty phase of Appellant's trial, the State presented victim impact evidence (**Tr. pp. 1618-24; 1632-35; 1641-47**) as well as photographs and additional testimony from the pathologist who performed the autopsy. **Tr. pp. 1675-81.** The remainder of the State's evidence was devoted to presenting evidence related to Appellant's character.

The State presented evidence of a 1985 Michigan conviction for unlawful possession of a weapon and a May 15, 1987, Michigan conviction (see State's Exhibit 49) for attempted breaking and entering with intent. At the time, Appellant had described the crime by saying that he had pushed open the front door of the Broadway Mark, entered the store and removed two handguns as well as \$10.00 in quarters. When later stopped by police, he managed to get away from them. Appellant spoke to David Saad (a parole and probation officer from the Michigan Department of Corrections) and said that his addiction to cocaine and crack cocaine caused him to commit the crime. **Tr. pp. 1648-57.**

Michelle Crowder testified to a September 1991 incident in South Carolina, in which Appellant robbed her and beat and kicked both her and her boyfriend. Her boyfriend was so badly injured that he had to go to the hospital. **Tr. pp. 1658-60.** Valerie Wisniewski testified about a September 13, 1991, incident in which Appellant stole money from her at the Rack Room where she was working as a cashier. **Tr. pp. 1662-64.**

Additionally, the State introduced evidence concerning Appellant's South Carolina convictions. On September 15, 1993, he was convicted of second offense DUS (92-GS-63-59), habitual traffic offender (93-GS-42-1804), DUS third offense (93-GS-42-1805). He was convicted of habitual traffic offender again on August 23, 1994 (94-GS-42-3666). On the same date, he was convicted of common law robbery in connection with the incident at Rack Room Shoes (92-GS-42-2606). On July 13, 1995, he was convicted of driving under suspension (third offense) (95-GS-42-160). On January 18, 1996, he was convicted of driving under suspension (sixth offense) (95-GS-42-3836) and driving under suspension

(fifth offense) (96-GS-42-387). On August 7, 1997, he was convicted of assault and battery of a high and aggravated nature on Ms. Sonja Harrison. **Tr. pp. 1665-70.**

ARGUMENT

I.

The trial judge did not abuse his discretion by ruling that Appellant could not argue “my very life is at stake” in his guilt phase closing argument because Appellant’s argument was not relevant to the question of his guilt or innocence, which was the only question before the guilt phase jury.

Appellant’s first contention is that the trial judge erroneously ruled that he could not argue “my life is in jeopardy here a second time” or “the State is seeking the death penalty, which means my very life is at stake” in his guilt phase closing argument. The State submits that the trial judge did not abuse his discretion because Appellant’s argument was irrelevant to the question of whether or not he was guilty of the crimes for which he was charged. Moreover, the jury was well aware that if he was convicted then a sentencing hearing would be held to determine whether he would be sentenced to either life imprisonment or the death penalty.

Appellant began his closing guilt phase argument to the jury by saying, “I am very nervous. All I can do is tell you that I am not guilty of murder.” The trial judge sustained the State’s objection that Appellant was testifying instead of making an argument.” **Tr. p. 1571, ll. 12-17.**

The trial judge instructed Appellant to limit himself to the evidence which had been presented at trial and explained that Appellant could not testify. Appellant responded by indicating that he heard the trial judge but was uncertain as to whether he could comply with

the judge's instructions.⁶ The trial judge told Appellant he would stop Appellant if he did not limit his argument as the trial judge had explained. **Tr. p. 1571, ll. 18-25.** Appellant then proceeded to point out that the State's theory that he had pawned items to buy crack cocaine was wrong because he had been employed at the time two of the items were purchased. **Tr. p. 1572, ll. 2-11.**

At this juncture, Appellant made the portion of his argument which the trial judge limited, as follows:

I am shaking up here because I don't know what to say. All I know is my life is in jeopardy here a second time.

MR. GOWDY: Your Honor, that is improper argument at this stage. I would object.

THE COURT: Sustain the objection.

Yes, sir. You are to limit yourself to the testimony in evidence and they are to determine the guilt or innocence, sir.

THE DEFENDANT: The state is seeking the death penalty on me, which means my very life is at stake.

MR. GOWDY: Your Honor, that's --

THE COURT: Sir, one moment. We are in the guilt phase. They are simply determining the guilt or innocence of the crimes charged at this point in time. That's all they

⁶ Appellant had earlier been belligerent in his request to have his trial attorneys removed and substitute counsel appointed. His belligerence was so bad that he repeatedly threatened to file a grievance against the trial judge, as he apparently had done with respect to his trial counsel. **See Tr. pp. 91-130.** The State submits a reasonable inference from the earlier conduct was that Appellant may well have understood precisely what the judge instructed him and had the ability to comply with the judge's instructions but voluntarily chose not to do so.

are doing in this stage of the trial. So, please limit it to that.

THE DEFENDANT: Your Honor, I am having trouble.

THE COURT: Yes, sir.

THE DEFENDANT: Please bear with me.

See what I am trying to do, put my hand in my pocket. I have no feeling in this hand.

MR. GOWDY: Objection, Your Honor. That is not in evidence.

THE COURT: I am going to let you talk to your lawyer just one moment, please, Mr. Moore.

Tr. p. 1572, l. 13 - p. 1573, l. 13.

In camera, the trial judge explained to Appellant that he had the right to make a closing argument to the jury but again emphasized that he had “to do it within the confines of the testimony and evidence that has been presented. You cannot go beyond that. . . . [S]ince you elected not to take the stand, you cannot testify. . . .” He further explained that Appellant could comment on the facts and what the evidence had revealed in the case. However, he could not mention punishment because “we are not about that right now.” If there were any violations of what the judge explained to him, the trial judge explained that he would stop Appellant’s argument. See Tr. p. 1573, l. 5 - p. 1575, l. 8. After the jury returned to the courtroom, **Tr. p. 1575, ll. 10-11**, Appellant completed his closing argument. **Tr. p. 1575, ll. 15-24.**

“A trial judge is vested with broad discretion in dealing with the range of propriety of closing argument, and ordinarily his rulings on such matters will not be disturbed. The Court must review the argument in the context of the entire record.” Also, the defendant

must show any alleged error deprived him of a fair trial. State v. Johnson, 306 S.C. 119, 131, 410 S.E.2d 547, 554-55 (1991), citing State v. Bell, 302 S.C. 18, 393 S.E.2d 367 (1990); see also State v. Patterson, 324 S.C. 5, 18, 482 S.E.2d 760, 766 (1997). Here, there is no abuse of discretion.

The purpose of the **sentencing phase** in a capital trial pursuant to § 16-3-20(B) is to direct the jury's attention to the specific circumstances of the crime and the characteristics of the offender. State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001). To this end, the trial judge may permit the introduction of additional evidence in extenuation, mitigation or aggravation of punishment, which ordinarily would have been inadmissible in the guilt phase. State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986); State v. Shaw, 273 S.C. 194, 200, 255 S.E.2d 799, 802 (1979); § 16-3-20 (B). However, the **guilt phase** of a capital trial is like that of a non-capital trial. The jury's function in the guilt phase is simply to determine whether or not the defendant is guilty of the offenses for which he is indicted. Cf. Kornahrens.

Thus, the argument which Appellant proposed to make was not relevant to the issues before the jury in the guilt phase of his trial. Rather, his argument was more appropriately addressed to the issues in the sentencing phase. Nor has S.C. Code Ann. § 16-3-28 (Supp. 2002) expanded a defendant's right to use his unsworn closing argument in the guilt phase to address matters which are more appropriately addressed in the sentencing phase. See State v. Davis, 306 S.C. 246, 251, 411 S.E.2d 220, 222 (1991) ("Of course, the trial judge may prohibit a defendant from answering unsworn testimony in his statement to a jury. . ."); cf. State v. Huiett, 271 S.C. 205, 207, 246 S.E.2d 862, 864 (1978) ("[o]rdinarily the jury is not

concerned with the punishment fixed by law” where the issue of punishment is not properly before it). Therefore, § 16-3-28 does not give a defendant the right to make arguments which are otherwise inappropriate in the guilt phase. Id.

Finally, to the extent Appellant asserts that his concern was that the jury understand that he faced the death penalty if the jury convicted him of murder in the guilt phase, his concern was satisfied by (1) the trial judge’s inquiry during the course of qualifying the jury *venire* (Tr. p. 207, l. 25 - p. 208, l. 19), (2) the *voir dire* of each petit juror who served on the jury (Tr. pp. 276-89; 294-309; 344-59; 388-401; 494-506; 510-20; 539-50; 565-78; 748-61; 764-78; 788-801; 849051; 1765) and (3) the trial judge’s opening remarks to the petit jury. Tr. p. 1178, l. 9 - p. 1179, l. 7.⁷ Clearly, the jury was well aware that if they found Appellant guilty of murder, there would be a separate phase of the trial in which they would determine whether or not he should be sentenced to either life imprisonment or the death penalty. As a result, even though Appellant’s proposed argument was improper, the substance of what he wished to communicate had already been brought to the jury’s attention and he cannot show any prejudice resulting from the trial judge’s ruling.

⁷ However, they were properly charged that in the guilt phase they were “not to consider punishment or sentence You are only to determine the innocence or guilt of the defendant based upon the evidence that will be introduced in the trial of the case.” Tr. p. 1179, ll. 3-7.

II.

Appellant's complaints about the trial judge's conduct of the on-the-record waiver of Appellant's right to make a closing argument in the sentencing phase is not properly before the Court because there was no objection at trial.

Over the State's arguments that the Court should not make such a requirement, in State v. Orr, 304 S.C. 185, 187-88, 403 S.E.2d 623, 624-25 (1991), this Court held that a trial judge must obtain an on-the-record waiver of a defendant's right to personally address the jury in both phases of the trial. Since that time, there have been a number of cases in which defendants have complained either about the trial judge's failure to conduct an on-the-record waiver or the manner in which he conducted it. See, e.g., State v. Charping, 333 S.C. 124, 133, 508 S.E.2d 851, 856 (1998) (rejecting argument that trial judge's conducting of on-the-record waiver before the State's closing argument rendered waiver involuntary); State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993) (holding that where on-the-record waiver is not made, issue should be addressed in PCR to determine whether or not the defendant's waiver of rights was, in fact, voluntary). See also Franklin v. Catoe, 346 S.C. 563, 552 S.E.2d 718 (2001).

Now, Appellant claims that the trial judge "erroneously and arbitrarily limited" his closing argument "'to the evidence that has been presented' which necessarily excludes an expression of remorse on plea for mercy." **Initial Brief of Appellant at 13.** The State submits that this argument is procedurally barred because Appellant did not object to the on-the-record waiver as conducted by the trial judge. Alternatively, the State submits that it is

without merit because the trial judge did not err in the manner in which he conducted the on-the-record waiver.

As he had in the guilt phase, the trial judge obtained an on-the-record waiver of Appellant's right to testify in the penalty phase. **Tr. p. 1686, l. 1 - p. 1687, l. 6.** Following a charge conference, the trial judge obtained an on-the-record waiver of Appellant's right to personally address the penalty phase jury. The waiver colloquy was as follows:

Of course, Mr. Moore, would you stand, please, sir?

(Whereupon the defendant stood).

THE COURT: As is the case in the sentencing phase, as well as the guilt phase that we have already been through, you certainly have the right, along with your attorney, to have a closing argument **regarding the sentence imposed.**

Now, once again, this is your right, Mr. Moore, to address the jury; and once again, **the statement that you would make to the jury would have to be confined to the evidence that has been presented and to the issues concerning the sentence imposed.**

Do you understand that you have this right, sir?

THE DEFENDANT: Yes, sir, I do.

THE COURT: And what is your decision?

THE DEFENDANT: I shall not speak, Your Honor.

THE COURT: You will not speak to the jury?

THE DEFENDANT: No, sir.

THE COURT: But you understand that that is your right?

THE DEFENDANT: Yes, sir.

THE COURT: All right, sir. Thank you very much, Mr. Moore.

Tr. p. 1713, l. 6 - 1714, l. 1 (emphasis added).

Thus, it is clear that Appellant did not object to the manner in which the trial judge conducted the penalty phase on-the-record waiver. As a result, the current argument is procedurally barred. State v. Byram, 326 S.C. 107, 112-13, 485 S.E.2d 360, 362-363 (1997); State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989). Further, Appellant did not make any proffer, whatsoever, concerning what argument he intended to make but felt that the trial judge's admonition prevented him from making. Under these circumstances, he deprived the trial judge of the opportunity to rule on the propriety of any supposed argument he wished to make and there is nothing for this Court to review. State v. Roper, 274 S.C. 14, 260 S.E.2d 705 (1979). Indeed, all we have is speculation concerning what he may have argued had he attempted to do so. In light of the on-the-record waiver, however, the State submits that any argument is procedurally barred. Id. See also Bailey.

Even assuming *arguendo* that the matter was not procedurally barred, it is clear that the trial judge did not abuse his discretion in the manner in which he conducted the on-the-record waiver. See Orr, *supra*; Charging, *supra*. Appellant's assertion that the trial judge told him that any argument "would have to be confined to the evidence that has been presented" (see **Tr. p. 1713, ll. 14-15**) ignores the remaining portion of the trial judge's explanation "and to the issues concerning the sentence imposed." **Tr. p. 1713, ll. 15-16.**

Clearly, the admonition that a closing argument would have to be confined to the evidence presented at trial and to issues concerning the appropriate sentence was proper. See Kornahrens, *supra*; Shaw, *supra*. In fact, he could not have given a more accurate description

of what the defendant could argue to the penalty phase jury since the jury, at that point, was determining the appropriate sentence to be imposed. Id. As a result, Appellant's argument is without merit.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General


DONALD J. ZELENKA
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

TREY GOWDY, III
Solicitor, Seventh Judicial Circuit

BY: 
WILLIAM EDGAR SALTER, III


DONALD J. ZELENKA

ATTORNEYS FOR RESPONDENT

May 28, 2003.

WES

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Spartanburg County
The Honorable Gary E. Clary, Circuit Court Judge

THE STATE,

Respondent,

vs.

RICHARD BERNARD MOORE,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent adopts the Designation of Matter as designated by the Appellant.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

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


HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

TREY GOWDY, III
Solicitor, Seventh Judicial Circuit

By: 
WILLIAM EDGAR SALTER, III

Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

May 28, 2003.

The Supreme Court of South Carolina

The State,

Respondent

v.

Richard Bernard Moore,

Appellant.

The Honorable Gary E. Clary
Spartanburg County

Trial Court Case No. 2000-GS-42-0617
2000-GS-42-0619
2001-GS-42-2460

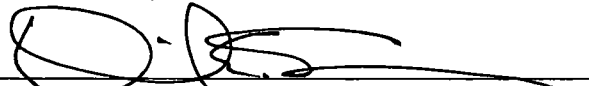
ORDER

For good cause having been shown, the time for serving and filing the Respondent's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until May 28, 2003.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY


CLERK

Columbia, South Carolina

April 29, 2003

cc: Deputy Chief Attorney Joseph L. Savitz, III
Senior Assistant Attorney General William Edgar Salter, III



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APR 28 2003

S.C. SUPREME COURT

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

April 28, 2003

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

Re: The State v. Richard Bernard Moore

Dear Mr. Shearouse:

I hereby request an extension of thirty days in which to file the Initial Brief of Respondent and Designation of Matter in the above-referenced case. The Initial Brief is currently due to be served and filed today. However, because of my involvement in other matters in state and federal court I have been unable to timely complete the Initial Brief. More specifically, I am lead counsel in the death penalty case of The State v. James Michael Charping. A hearing was held in this case April 21-23, 2003, before the Honorable J. C. Nicholson, Jr., in the Lexington County Courthouse. It was necessary for me to spend a great deal of time preparing for the hearing. The transcript in the above-referenced case is lengthy and I have not had adequate time to complete reading it.

Therefore, I am requesting this extension within which to serve and file the Brief. I am informing opposing counsel of my request by copy of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "William Edgar Salter, III".

William Edgar Salter, III
Senior Assistant Attorney General

WES,III/shb

cc: Joseph L. Savitz, III, Esquire
Ms. Sandi Wofford, Victim Services



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 26, 2003

RECEIVED
2003 MAR 27 AM 10:02
SC SUPREME COURT

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

Re: The State v. Richard Bernard Moore

Dear Mr. Shearouse:

I have been assigned to represent the State in the above-referenced case. Please change your records to reflect my assignment. By copy of this letter, I am advising opposing counsel of my assignment so that all future correspondence and pleadings may be sent to me.0

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Will Salter".

William Edgar Salter, III
Senior Assistant Attorney General

WES,III/shb

cc: Joseph L. Savitz, III, Esquire
Ms. Sandi Wofford, Victim Services

*not
scanned*

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Gary E. Clary, Circuit Court Judge

CLERK OF THE COURT
SOUTH CAROLINA
COLUMBIA, S.C.

THE STATE,

RESPONDENT,

V.

RICHARD BERNARD MOORE,

APPELLANT

INITIAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Deputy Chief Attorney

South Carolina Office
of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

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2. The judge erred during the sentencing phase by once again limiting Moore’s closing argument “to the evidence that has been presented and to the issues concerning the sentence imposed.” Since S.C. Code Sections 16-3-20(C) and 16-3-28 afford a capital defendant the opportunity to ask for mercy and express feelings of remorse, this arbitrary limitation was an abuse of discretion and rendered Moore’s purported waiver of closing argument involuntary 12

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STATEMENT OF ISSUES ON APPEAL

1. The judge erred during the guilt phase by preventing Moore from stressing the gravity of the decision facing the jury by arguing, “The State is seeking the death penalty on me, which means my very life is at stake.” The judge abused his discretion by ruling that Moore could not mention punishment, but was limited solely to a discussion of “the testimony and evidence that has been presented.”

2. The judge erred during the sentencing phase by once again limiting Moore’s closing argument “to the evidence that has been presented and to the issues concerning the sentence imposed.” Since S.C. Code Sections 16-3-20(C) and 16-3-28 afford a capital defendant the opportunity to ask for mercy and express feelings of remorse, this arbitrary limitation was an abuse of discretion and rendered Moore’s purported waiver of closing argument involuntary.

STATEMENT OF FACTS

On January 13, 2000, a Spartanburg County grand jury indicted Richard Bernard Moore for murder, assault with intent to kill, armed robbery and possession of a firearm during the commission of a violent crime. The State sought the death penalty, relying on three aggravating circumstances: that the murder had occurred during the commission of robbery while armed with a deadly weapon; that Moore had, by his act of murder, knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person; and that Moore had committed the murder for the purpose of receiving money or a thing of monetary value. S.C. Code Section 16-3-20(C)(a)(1)(d), (C)(a)(3) and (C)(a)(4).

Judge Gary E. Clary presided at Moore's jury's trial October 15 through 22, 2001. Moore is black. The homicide victim, James Mahoney, was white. The jury comprised eleven whites and one Hispanic.

The charges against Moore arose from the (initially unarmed) robbery and shooting of Mahoney, a convenience store clerk working third shift. The State believed that the motive for the robbery was that Moore was broke and needed money to buy crack cocaine. Tr. p. 1247, line 6 – p. 1248, line 4; tr. p. 1371, lines 4-24; tr. p. 1374, line 2 – p. 1375, line 7. The killing itself was clearly unpremeditated, since Moore was unarmed when he entered the store and tried to grab the money and run.

An eyewitness (literally, as he had only one good eye), Terry Hadden, was in the store playing video poker at the time of the incident and saw almost everything. Tr. p. 1194, lines 13-21. He gave the following account:

There was a black man come in the store. And as he come in the store and got in the store, he looked over at me, glanced at me. I glanced at him. He walked toward the cooler. I turned back around and played the poker machine.

Tr. p. 1204, lines 10-18. He identified this man as Moore and continued:

Right as he walked in the cooler, I turned around and was shooting (sic) the poker machine. The next think I know of anything going on in the store is when I heard Jamie [Mahoney] say, "What the hell do you think you are doing?"... I made a turning motion around to see what was going on. And as I did, that man right there, Mr. Moore, had Jamie by both of his hands with one of his hands. As I turned around, he come around and come up with a gun and told me not to move.

Tr. p. 1204, line 19 – p. 1206, line 6. Moore had taken the gun, a forty-five automatic, away from Mahoney. Tr. p. 1347, lines 12-22. The gun was in his right hand. Tr. p. 1208, lines 18-23. He pointed it toward Hadden and fired a round into the wall above the poker machine Hadden was playing. Tr. p. 1207, lines 14-21; tr. p. 1210, lines 9-14; tr. p. 1319, lines 5-15.

At this point, Mahoney pulled and fired a forty-four revolver he always kept tucked in his jeans and blew a hole through Moore's left arm. Tr. p. 1212, lines 7-12; tr. p. 1277, lines 4-15; tr. p. 1348, lines 9-20; tr. p. 1377, line 19 – p. 1378, line 2; tr. p. 1382, lines 3-16. Moore spun around and opened fire, shooting Mahoney through the heart. Tr. p. 1208, line 24 – p. 1209, line 5; tr. p. 1429, line 22 – p. 1430, line 17; tr. p. 1491, line 7 – p. 1495, line 2. Mahoney fell to the floor unconscious and bled to death in minutes. Tr. p. 1500, line 10 – p. 1503, line 16.

Moore then grabbed a money bag containing \$1,408 and fled in his pickup. Tr. p. 1240, lines 3-7. Tr. p. 311, lines 9-24; tr. p. 1313, lines 19 and 20. He threw the forty-five

out the window. Tr. p. 1263, lines 2-5. Moore drove to his dealer's house and unsuccessfully tried to buy crack cocaine, then backed his truck into a telephone pole as he was leaving. Tr. p. 1237, line 13 – p. 1238, line 11; tr. p. 1248, line 7 – p. 1249, line 17. A deputy sheriff cruising the area on the lookout for the perpetrator of the robbery and homicide witnessed the accident and arrested Moore without incident. Tr. p. 1238, line 23 – p. 1239, line 5. He said Moore repeatedly shouted, "I did it, I did it, I give up, I give up." Tr. p. 1239, lines 6-17.

Moore did not testify at either phase of his trial. He attempted to make a closing argument during the guilt phase, but the judge precluded him from arguing, "The state is seeking the death penalty on me, which means my very life is at stake." Tr. p. 1572, line 22 – p. 1573. He held that Moore could not go beyond "the testimony and evidence that has been presented... Insofar as mentioning punishment, you are not to mention that, because we are not about that right now." Tr. p. 1573, line 23 – p. 1575, line 8. [This abuse of discretion is addressed in the first argument of this brief.] The jury found Moore guilty of all four offenses as charged.

In addition to the three statutory aggravators previously mentioned, at sentencing the judge instructed the jury on the following three statutory mitigators: that the murder was committed while Moore was under the influence of mental or emotional disturbance; that Moore's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law were substantially impaired; and Moore's age or mentality at the time of the crimes. Section 16-3-20(C)(b)(2), (6) and (7). Tr. p. 1744, lines 15-24. These mitigators were based on evidence that Moore had been drinking and possibly smoking crack cocaine shortly before the incident. Tr. p. 1377, line 22 – p. 1378, line 5; tr. p. 1705,

lines 13-23. The judge also explained, “If a recommendation of death is not made, the defendant shall be sentenced to life imprisonment without the possibility of parole.” Tr. p. 1734, lines 20-22. Moore decided not to make a closing argument to the jury in the sentencing phase after the judge told him that, “Once again, the statement that you would make to the jury would have to be confined to the evidence that has been presented and to the issues concerning the sentence imposed.” Tr. p. 1713, lines 8-22. [This abuse of discretion is addressed in the second argument of this brief.]

The jury recommended death, and the judge sentenced Moore accordingly.

ARGUMENT

I.

The judge erred during the guilt phase by preventing Moore from stressing the gravity of the decision facing the jury by arguing, “The State is seeking the death penalty on me, which means my very life is at stake.” The judge abused his discretion by ruling that Moore could not mention punishment, but was limited solely to a discussion of “the testimony and evidence that has been presented.”

As noted previously, Moore did not testify at either phase of his trial. He did elect to make a closing argument at the guilt phase. “I am very nervous,” he began. Tr. p. 1571, line 13. “All I can do is tell you that I am not guilty of murder.” Tr. p. 1571, lines 13 and 14. The solicitor objected that Moore was testifying. Tr. p. 1571, lines 15 and 16. The judge sustained the objection and told Moore, “You need to limit yourself to the evidence that has been produced. You cannot testify.” Tr. p. 1571, lines 17-20. Moore responded, “I hear what you are saying, but I don’t know if I am going to be able, but I’m going to try.” Tr. p. 1571, lines 21 and 22. The judge warned, “Well, sir, if you are not able to, then I will have to stop you.” Tr. p. 1571, lines 23 and 24.

Moore then contested the state’s evidence that he was broke and needed money to buy crack cocaine. Tr. p. 1572, lines 2-11. Next, he attempted to impress upon the jury the gravity of their task: “I am nervous. I am shaking up here because I don’t know what to say. All I know is my life is in jeopardy here a second time.” Tr. p. 1572, lines 13-15. The solicitor objected that Moore’s argument was “improper... at this stage.” Tr. p. 1572, lines 16 and 17. The judge sustained the objection and told Moore, “You’re to limit yourself to the testimony and evidence, and they are to determine the guilt or innocence, sir.” Tr. p.

1572, lines 18-21. Moore continued, “The State is seeking the death penalty on me, which means my very life is at stake.” Tr. p. 1572, lines 22 and 23. The judge again held, “We are in the guilt phase. They are simply determining the guilt or innocence of the crimes charged at this point in time. That’s all they are doing in this stage of the trial. So, please limit it to that.” Tr. p. 1572, line 24 – p. 1573, line 4. The judge then sent the jury from the courtroom and amplified his ruling:

Now, Mr. Moore, I want you to understand that you certainly have the right to make the closing argument to the jury. That’s provided for by law. But, once again, you have to do it within the confines of the testimony and evidence that has been presented. You cannot go beyond that... [S]ince you elected not to take the stand, you cannot testify...

You may not testify. You gave that right up. You can comment on the facts, what the evidence has revealed in this case. Insofar as mentioning punishment, you are not to mention that, because we are not about that right now. And, if there are any violations of what I am laying out at this time, you are going to stand over here. Then I’m going to stop your argument. And then we will proceed into the charge on the law.

Tr. p. 1573, line 5 – p. 1575, line 8. The jury returned to the courtroom. Tr. p. 1575, lines 10 and 11. In consequence of the judge’s rulings, the balance of Moore’s closing argument was perfunctory and truncated:

Ladies and gentlemen of the jury, please forgive me for the mistakes I made in this presentation... I don’t want to offend Your Honor any longer, so I am not going to say any more. I think I have said enough. I just ask that you be fair and don’t guess, because that’s what you are being asked to do, guess. Thank you.

Tr. p. 1575, lines 15-24.

The judge erred during the guilt phase by preventing Moore from stressing the gravity of the decision facing the jury. The judge abused his discretion by ruling that Moore could not mention punishment, but was limited commenting upon “the testimony and evidence that has been presented.”

S.C. Code Section 16-3-28 provides, “[I]n any criminal trial where the maximum penalty is death... the defendant and his counsel shall have the right to make the last argument.” The Court has held that this statute “clearly indicates that the legislature intended for capital defendants to have a personal right to make the last argument in both phases of their trials.” State v. Charping, 313 S.C. 147, 437 S.E.2d 88, 89 (1993); see, also, Cooper v. Moore, 351 S.C. 207, 569 S.E.2d 330 (2002).

The judge’s ruling that Moore could not comment upon the possibility of a death sentence during the guilt phase is apparently based upon the Court’s opinion in State v. Huiett, 271 S.C. 205, 246 S.E.2d 862 (1978). In that case the Court observed that “ordinarily what becomes of an accused upon either conviction or acquittal is of no concern to the jury.” 246 S.E.2d at 864. Huiett relied upon an earlier case, State v. McGee, 268 S.C. 618, 235 S.E.2d 715, 716 (1977), wherein the Court stated:

As a general rule, where the right to fix the punishment is exclusively within the province of the court, it is not error to refuse an instruction with regard to punishment, since information as to the penalty is of no aid to the jury in determining whether the defendant committed the crime charged. However, where the right to fix the punishment or make a recommendation with regard to punishment rest with the jury, it is error for the court to refuse to instruct the jury in that respect. [Citations omitted.]

In Moore’s case, of course, the jury would determine the appropriate punishment if they found him guilty of murder.

The determination of guilt in a capital case must be especially reliable. See, for example, Beck v. Alabama, 447 U.S. 625 (1980). It is true that a trial judge may prohibit the defendant from offering unsworn testimony in his statement to the jury. State v. Davis, 306 S.C. 246, 411 S.E.2d 220 (1991). Yet the judge may not preclude such a defendant from making a legitimate argument stressing the importance of the jury's decision at the guilt phase by pointing out that a determination of guilt carries with it the distinct possibility of a death sentence. Contrary to the judge's ruling, there is absolutely no rule of law which prohibits a capital defendant from mentioning that possibility during his closing argument in the guilt phase.

Moore's argument that "my very life is at stake" was perfectly legitimate. The judge's limitation of Moore's closing argument to "the testimony and evidence that has presented" was arbitrary and unduly restrictive. This abuse of discretion means that Moore's convictions must be reversed and his case remanded for a new trial. However, the prejudicial effect of the judge's ruling did not end with the guilt phase, but carried over to Moore's purported waiver of the right to make a closing argument at sentencing, as will now be shown.

II.

The judge erred during the sentencing phase by once again limiting Moore's closing argument "to the evidence that has been presented and to the issues concerning the sentence imposed." Since S.C. Code Sections 16-3-20(C) and 16-3-28 afford a capital defendant the opportunity to ask for mercy and express feelings of remorse, this arbitrary limitation was an abuse of discretion and rendered Moore's purported waiver of closing argument involuntary.

At the conclusion of the sentencing phase, the judge advised Moore that he had the right to make a closing argument to the jury, but reminded him that, "once again, the statement that you would make to the jury would have to be confined to the evidence that has been presented and to the issues concerning the sentence imposed." Tr. p. 1713, lines 8-16. This was the same arbitrary limitation of closing argument that the judge had rigidly applied at the guilt phase. In consequence, Moore purportedly waived his right to address the jury at sentencing. Tr. p. 1713, lines 17-24.

S.C. Code Section 16-3-20(B) provides, "[T]he defendant and his counsel are permitted to present arguments for or against the sentence to be imposed." See, also, State v. Norris, 285 S.C. 86, 328 S.E.2d 339 (1985). Section 16-3-28 states, "[I]n any criminal trial where the maximum penalty is death... the defendant and his counsel shall have the right to make the last argument."

A capital defendant's sentencing phase argument must be distinguished from the more circumscribed common law right of allocution. "Defendant's closing argument is not allocution, but is his opportunity to present arguments in mitigation before the factfinder deliberates." State v. Stokes, 345 S.C. 368, 548 S.E.2d 202, 207 n. 11 (2001). "Although, of course, the trial judge may prohibit a defendant from offering unsworn testimony in his

statement to the jury, a defendant may present argument regarding the facts that are in evidence to direct the jury's attention to the circumstances of the crime or the defendant's own characteristics, since these are proper sentencing considerations." State v. Davis, 411 S.E.2d at 222. A principal purpose of closing argument at sentencing is to afford the defendant an opportunity to express remorse and plead for mercy. See, for example, State v. Stokes, State v. Davis and State v. Woomer, 278 S.C. 468, 299 S.E.2d 317 (1982). This is especially true in South Carolina, since capital juries are instructed (as here) that "the defendant [may] be sentenced to life imprisonment for any reason or for no reason at all. This is what has been traditionally referred to as a recommendation of mercy." Tr. p. 1745, line 22 – p. 1746, line 3. The defendant may not rebut any facts in evidence, deny his guilt or express remorse that contradicts the evidentiary facts. A trial judge may preclude a defendant from arguing about God or religion. State v. Stokes and State v. Shafer, 340 S.C. 291, 531 S.E.2d 524 (2000).

Waiver of closing argument must be intelligent and voluntary. State v. Orr, 304 S.C. 185, 403 S.E.2d 623 (1991); see, also, Franklin v. Catoe, 346 S.C. 563, 552 S.E.2d 718 (2001). A purported waiver of a constitutional or statutory right prompted by a judge's erroneous explanation of the law is invalid. See, for example, State v. Gunter, 286 S.C. 556, 335 S.E.2d 542 (1985).

Here, in both the guilt and sentencing phases, the judge erroneously and arbitrarily limited Moore's closing argument "to the evidence that has been presented," which necessarily excludes an expression of remorse on plea for mercy. The error was not obviated by defense counsel's "general plea" for mercy in his closing argument. Tr. p. 1730, lines 13-19. As the oft-quoted passage from Green v. United States, 365 U.S. 301,

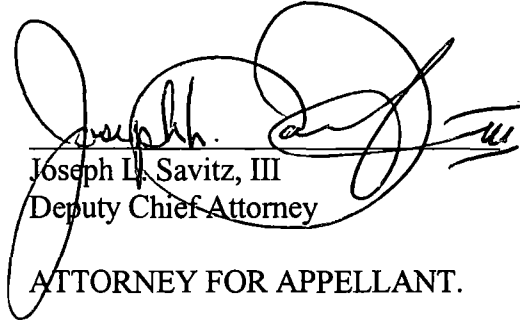
304 (1961) observes, “The most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself.”

In short, the judge abused his discretion by summarily precluding the most important function of closing argument. In consequence, Moore’s purported waiver of closing argument was neither intelligent nor voluntary. The Court should reverse Moore’s death sentence and remand for resentencing.

CONCLUSION

To summarize: the judge's arbitrary limitation of Richard Bernard Moore's right to closing argument at the guilt and sentencing phases constituted an abuse of discretion and requires the reversal of Moore's convictions and death sentence.

Respectfully submitted,



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

This 13th day of March, 2003.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD BERNARD MOORE,

APPELLANT

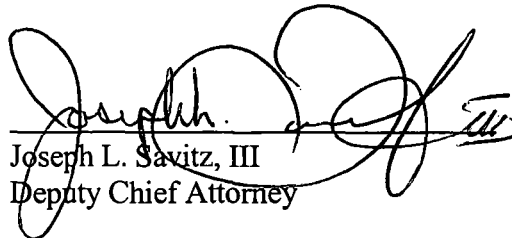
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Trial transcript
- (2) Indictments
- (3) Notice of intention to seek the death penalty
- (4) Notice of evidence in aggravation
- (5) Supplemental notice of evidence in aggravation
- (6) Juror questionnaire

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

March 13th, 2003


Joseph L. Savitz, III
Deputy Chief Attorney

S.C. Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

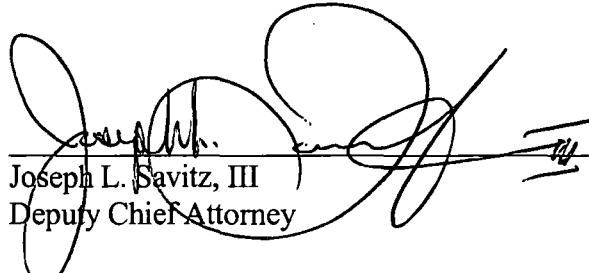
V.

RICHARD BERNARD MOORE,

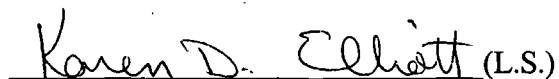
APPELLANT

CERTIFICATE OF SERVICE

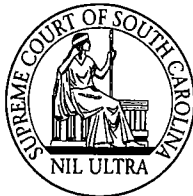
The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, this 13th day of March, 2003.


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

SUBSCRIBED AND SWORN TO before me
this 13th day of March, 2003.


Notary Public for South Carolina

My Commission Expires: March 13, 2007.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 20, 2003

Deputy Chief Attorney Joseph L. Savitz, III
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

Re: The State v. Moore, Richard Bernard

Dear Counsel:

The following Order has been endorsed on your Motion for an Extension of Time in Which to File the Initial Brief of Appellant and Designation of Matter in the above entitled case on appeal.

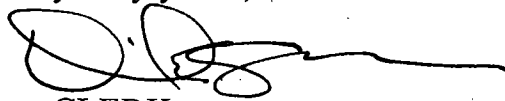
“Granted.

s/ Jean H. Toal C.J.
For the Court

February 20, 2003.”

Please be advised that these documents should be served and filed on or before March 14, 2003.

Very truly yours,



CLERK

DES/dmh

Deputy Chief Attorney Joseph L. Savitz, III

Page Two

February 20, 2003.

cc: Assistant Deputy Attorney General Donald J. Zelenka

South Carolina Office of Appellate Defense

ORIGINAL

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243

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

Wanda H. Haile
Senior Assistant Appellate Defender

February 12, 2003

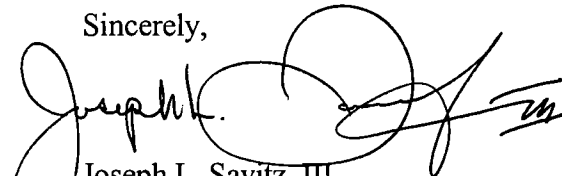
The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
PO Box 11330
Columbia, SC 29211

Re: State v. Richard Bernard Moore

Dear Mr. Shearouse:

Enclosed is the original petition for extension of time in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,



Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/kde

Enclosure

cc: Donald J. Zelenka

RECEIVED
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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD BERNARD MOORE,

APPELLANT

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

Counsel for Richard Bernard Moore respectfully requests an additional thirty days (until March 14) in which to file the initial brief and designation of matter in this death penalty case. Counsel has previously received three thirty-day extensions in connection with this step in the process. Counsel will request no further extensions of time in connection with this appeal. In support of this request, counsel shows:

(1) Counsel has recently finished working on another death penalty case (Hastings Arthur Wise v. State), which was filed with the Court on January 13, 2003. He is also handling other noncapital appeals and various administrative duties.

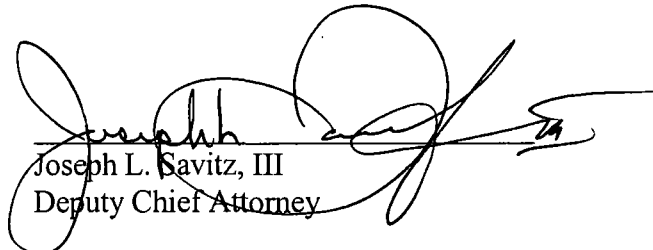
(2) Concurrently, counsel is working on the appeals in State v. Brenda Gail Cutro and State v. Johnny Brewer, both of which involve trial transcripts thousands of pages long.

(3) Counsel has worked diligently on this appeal and does not request this extension for purposes of delay.

(4) 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 March 14) in which to file the initial brief and designation of matter in this death penalty case.

Respectfully submitted,

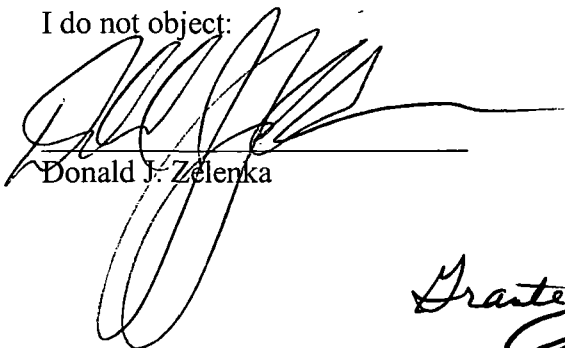


Joseph L. Savitz, III
Deputy Chief Attorney

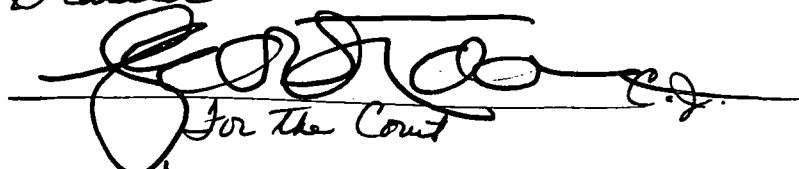
Attorney for Appellant

This 12th day of February, 2003

I do not object:



Donald J. Zelenka

Granted:

For the Court
February 20, 2003

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

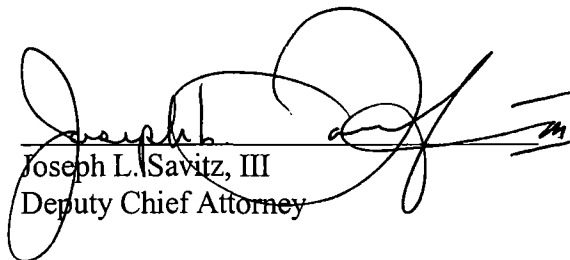
V.

RICHARD BERNARD MOORE,

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 12th day of February, 2003.



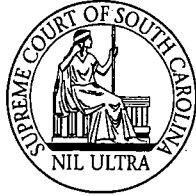
Joseph L. Savitz, III
Deputy Chief Attorney

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 12th day of February, 2002.

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

My Commission Expires: March 13, 2007



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 24, 2003

Deputy Chief Attorney Joseph L. Savitz, III
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

Re: The State v. Moore, Richard Bernard

Dear Counsel:

Enclosed is the order issued in the above entitled matter.

By copy of this letter and order, we are advising all interested parties of the action by the Court.

Very truly yours,

DEPUTY CLERK

BFS/dmh

Enclosure

cc: Assistant Deputy Attorney General Donald J. Zelenka

The Supreme Court of South Carolina

The State, Respondent,

v.

Richard Bernard Moore, Appellant.

ORDER

Appellant has requested an extension of time to file his initial brief and designation of matter to be included in the record on appeal.

Appellant's request is granted. The time for serving and filing the initial brief and designation of matter to be included in the record on appeal is extended until February 12, 2003.

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

January 24, 2003

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Appeal from Spartanburg County
Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD BERNARD MOORE,

APPELLANT

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SC SUPREME COURT

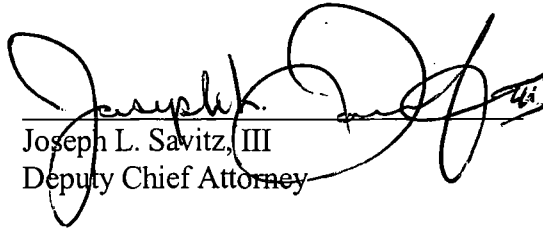
MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

Counsel for Richard Bernard Moore respectfully requests an additional thirty days (until February 12) in which to file the initial brief of appellant and designation of matter in this death penalty case. Counsel has previously received two thirty-day extensions in connection with this step in the process. Counsel for the state does not object to this request, as indicated by his signature below.

Administrative exigencies and heavy caseload have prevented counsel from reading the record in this case. Counsel makes this request in good faith and not for purposes of delay.

Therefore, counsel requests an additional thirty days (until February 12) in which to file the initial brief of appellant and designation of matter in this case.

Respectfully submitted,

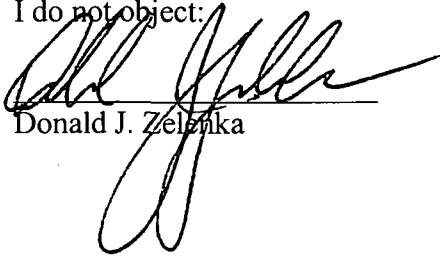


Joseph L. Savitz, III
Deputy Chief Attorney

Attorney for Appellant

This 13th day of January, 2003

I do not object:



Donald J. Zelinka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

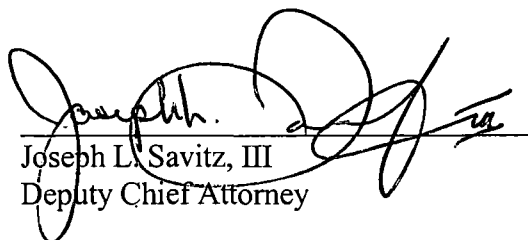
V.

RICHARD BERNARD MOORE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the motion for an extension of time in the above referenced case has been served upon opposing counsel, Donald J. Zelenka, this 13th day of January, 2003.



Joseph L. Savitz, III
Deputy Chief Attorney

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 13th day of January, 2003.

Karen 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.

Richard Bernard Moore,

Appellant.

The Honorable Gary E. Clary
Spartanburg County
Trial Court Case No. 2000-GS-42-0617
2000-GS-42-0619
2001-GS-42-2460

ORDER

For good cause having been shown, the time for serving and filing Appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until January 13, 2003.

IT IS SO ORDERED.



J.

For the Court

Columbia, South Carolina

December 13, 2002

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

The Supreme Court of South Carolina

The State,

Respondent

v.

Richard Bernard Moore,

Appellant.

The Honorable Gary E. Clary
Spartanburg County

Trial Court Case No. 2000-GS-42-0517
2000-GS-42-0619
2001-GS-42-2460

ORDER

For good cause having been shown, the time for serving and filing Appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until January 13, 2003.

IT IS SO ORDERED.



For the Court

J.

Columbia, South Carolina

December 13, 2002

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

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD BERNARD MOORE,

APPELLANT

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SC SUPREME COURT

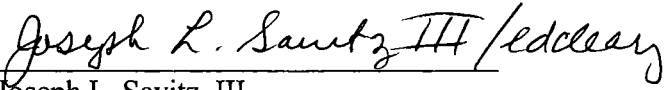
MOTION FOR AN EXTENSION OF TIME
IN WHICH TO FILE THE INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

Counsel for Richard Bernard Moore respectfully requests an additional thirty days (until January 13) in which to file the initial brief of appellant and designation of matter in this death penalty case. Counsel has previously received a thirty-day extension in connection with this step in the process. Counsel for the state does not object to this request, as indicated by his signature below.

Administrative exigencies and heavy caseload have prevented counsel from reading the record in this case. Counsel makes this request in good faith and not for purposes of delay.

Therefore, counsel requests an additional thirty days (until January 13) in which to file the initial brief of appellant and designation of matter in this case.

Respectfully submitted,

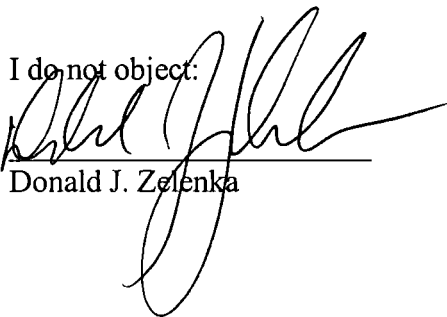


Joseph L. Savitz, III
Deputy Chief Attorney

Attorney for Appellant

This 12th day of December, 2002

I do not object:



Donald J. Zelenka

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

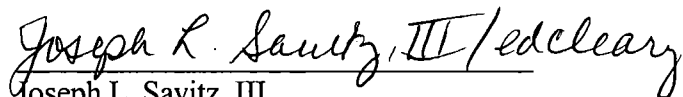
V.

RICHARD BERNARD MOORE,

APPELLANT

CERTIFICATE OF SERVICE

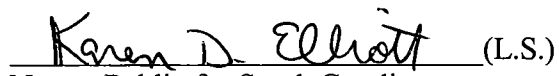
The undersigned attorney hereby certifies that a true copy of the motion for an extension of time in the above referenced case has been served upon opposing counsel, Donald J. Zelenka, this 12th day of December, 2002.



Joseph L. Savitz, III
Deputy Chief Attorney

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 12th day of December, 2002.



Notary Public for South Carolina

My Commission Expires: March 13, 2007

The Supreme Court of South Carolina

The State,

Respondent

v.

Richard Bernard Moore,

Appellant.

The Honorable Gary E. Clary
Spartanburg County
Trial Court Case No. 2000-GS-42-0617
2000-GS-42-0619
2001-GS-42-2460

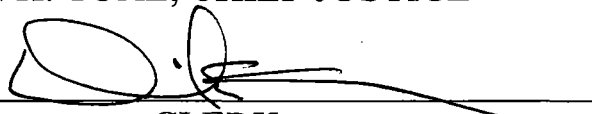
ORDER

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 December 12, 2002.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY



CLERK

Columbia, South Carolina

November 13, 2002

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

ORIGINAL

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243

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

November 12, 2002

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

RECEIVED
2002 NOV 12 PM 4: 00
SC SUPREME COURT

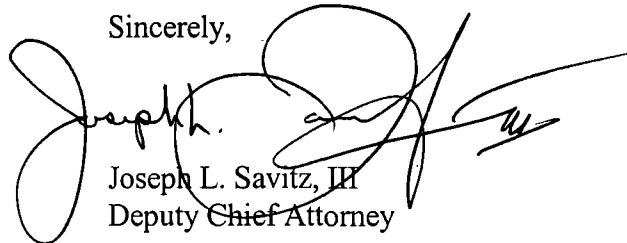
Re: The State v. Richard Bernard Moore

Dear Mr. Shearouse:

The initial brief of appellant and designation of matter in this death penalty case 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 December 12, 2002, 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
Deputy Chief Attorney

JLS,III/kde

cc: Donald J. Zelenka

South Carolina Office of Appellate Defense

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September 12, 2002

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

RECEIVED
2002 SEP 13 PM 4:15
SC SUPREME COURT

Re: The State v. Richard Bernard Moore

Dear Mr. Shearouse:

Enclosed please find a copy of the letter I received from Michael D. Morin, trial counsel in the above referenced capital appeal. Because it now appears there was no hearing on May 28th, I would appreciate it if you would start out time limits from today's date.

Should you have any questions concerning this matter or if you need any additional information, please do not hesitate to contact me.

Sincerely yours,



Sandra R. Wise
Legal Assistant

cc: Donald J. Zelenka, Esquire

SPARTANBURG COUNTY PUBLIC DEFENDER OFFICE
J. MICHAEL BARTOSH
CHIEF PUBLIC DEFENDER

258 NORTH CHURCH STREET
SPARTANBURG SC 29306



TELEPHONE (864) 596-2561
FAX (864) 596-2284

9/12/2002

Sandra Wise
Office of Appellate Defense
Columbia, SC 29210

SENT VIA FAX: 803-734-1397

RE: State v. Richard Moore

Dear Ms. Wise:

After reviewing my file carefully and meeting with the court reporter I have determined that I was in error in reporting a May 28 hearing date. I am not sure how that date got into those I reported as having been hearing dates, but there was no hearing on that date. I apologize for any inconvenience this may have caused.

Sincerely,



Michael D. Morin

CC: Pam Green
Linda Moffit

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney
Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, SC 29201-3243

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

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

June 19, 2002

Ms. Pamela E. Green
Circuit Court Reporter
121 Bradford Crossing Drive
Roebuck, SC 29376

Dear Ms. Green:

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

The State v. Richard Bernard Moore

Indictment #: 00-GS-42-0617

County: Spartanburg

Date of Trial: May 30, 2001 (Motion Hearing)

Presiding Judge: Gary E. Clary

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 DI-4 form 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.

RECEIVED
2002 JUL -3 PM 4: 20
SC SUPREME COURT

ORIGINAL

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243

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Fax: (803) 734-1397

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Katherine Carruth Link
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Wanda H. Haile
Senior Assistant Appellate Defender

June 7, 2002

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211
ATTN: Debbie Hopkins

RECEIVED
2002 JUN -7 PM 4:17
SC SUPREME COURT

Re: The State v. Richard Bernard Moore (capital case)

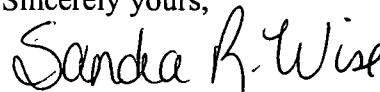
Dear Debbie:

I am writing to follow up on the status of the above referenced capital case. I spoke on June 5, 2002, with trial counsel concerning the two dates that I have been unable to confirm were actual hearings in this case.

Mr. Morin stated that the April 22nd date was incorrect and that the hearing was actually held on April 3rd. We have a copy of the transcript from the April 3rd hearing. The May 30th hearing date, however, was correct. Mr. Morin stated that during this hearing, the state moved to have the defendant evaluated. He indicated that either Ms. Pam Green or Ms. Linda Moffitt was the court reporter, but that the hearing was held before Judge Clary. I have spoken with Ms. Moffitt, who was on vacation that week. I have also spoken with Ms. Margaret Briggs, who worked with Judge Clary that week in Laurens County. However, Ms. Briggs indicated that she had taken no hearing in connection with this case that week. I am today writing Ms. Pam Green to see if she possibly took this hearing.

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

Sincerely yours,



Sandra R. Wise
Legal Assistant

cc: Donald J. Zelenka, Esquire

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
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Columbia, S.C. 29201-3243

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Assistant Appellate Defenders

April 15, 2002

Michael D. Morin, Esquire
Assistant Public Defender
Spartanburg County
258 North Church Street
Spartanburg, South Carolina 29306

Re: The State v. Richard Bernard Moore (capital case)

Dear Mr. Morin:

I have encountered problems obtaining the trial transcripts for two hearing dates in this matter and would appreciate any help you could give to locate the right dates and/or court reporters. I appreciate your prompt attention since the Supreme Court looks with strong disfavor upon an extension request in a death penalty case that is mandated by a missing hearing.

The first date is April 22, 2001, before Judge Clary. Linda Moffitt, the court reporter who took most of the case, does not have anything on a motion hearing held on this date. Also, April 22, 2001, is on a Sunday. Would you please check your time records to see if there is a different date?

The second date is May 30, 2001. Linda Moffitt indicated that she was on vacation that week and did not take any hearings on this case. She thought Judge Clary was also on vacation that week, but according to the roster, he was in Laurens County with Margaret Briggs as the reporter. I called Ms. Briggs, and she confirmed that she was in Laurens County that week with Judge Clary, but that after a thorough search of her records, she could not locate any hearing held that week in this case.

By copy of this letter, I am asking attorney Keith Kelly if he would also check his time sheets to ascertain if he has a different date or court reporter. If either you or Mr. Kelly would prefer to send a copy of your time sheets to our office, please feel free to do so as this is how we have located many hearing dates prior to this case.

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SC SUPREME COURT

Michael D. Morin
April 15, 2002
Page 2

If you have any questions or need additional information, please do not hesitate to contact me. Kindly understand that the Supreme Court does not relieve you from continuing to represent Mr. Moore until we have this information in our possession. I appreciate and thank you in advance for your immediate attention so that we can properly represent Mr. Moore on appeal.

Sincerely yours,

A handwritten signature in cursive script that reads "Sandra R. Wise".

Sandra R. Wise
Legal Assistant

Cc: R. Keith Kelly, Esquire
Honorable Daniel E. Shearouse

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
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Deputy Chief Attorney
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Assistant Appellate Defenders

November 20, 2001

Ms. Linda D. Moffitt
Circuit Court Reporter
800 Belcher Road
Spartanburg, SC 29316

NOV 20 2001

S.C. SUPREME COURT

Dear Ms. Moffitt:

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

The State v. Richard Bernard Moore

Indictment #: 00-GS-42-0617

County: Spartanburg

Date of Trial: September 28, 2001 (motions hearing)

Presiding Judge: Gary E. Clary

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 DI-4 form 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. Linda D. Moffitt

November 20, 2001

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 "Sandra R. Wise".

Sandra R. Wise
Legal Assistant

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

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney
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Columbia, SC 29201-3243

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Assistant Appellate Defenders

November 20, 2001

Ms. Linda D. Moffitt
Circuit Court Reporter
800 Belcher Road
Spartanburg, SC 29316

RECEIVED
NOV 20 2001
S.C. SUPREME COURT

Dear Ms. Moffitt:

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

The State v. Richard Bernard Moore

Indictment #: 00-GS-42-0617

County: Spartanburg

Date of Trial: May 30, 2001 (motions hearing)

Presiding Judge: Gary E. Clary

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 DI-4 form and include the original criminal case number (Indictment number) where the space is provided.

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Ms. Linda D. Moffitt
November 20, 2001
Page Two

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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,


Sandra R. Wise
Legal Assistant

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

South Carolina Office of Appellate Defense

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Assistant Appellate Defenders

November 20, 2001

Ms. Linda D. Moffitt
Circuit Court Reporter
800 Belcher Road
Spartanburg, SC 29316

RECEIVED

NOV 20 2001

S.C. SUPREME COURT

Dear Ms. Moffitt:

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

The State v. Richard Bernard Moore

Indictment #: 00-GS-42-0617

County: Spartanburg

Date of Trial: April 22, 2001 (motions hearing)

Presiding Judge: Gary E. Clary

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 DI-4 form and include the original criminal case number (Indictment number) where the space is provided.

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Ms. Linda D. Moffitt
November 20, 2001
Page Two

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Thank you for your kind cooperation in this matter.

Sincerely,



Sandra R. Wise
Legal Assistant

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

South Carolina Office of Appellate Defense

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Eleanor Duffy Cleary
Assistant Appellate Defenders

November 6, 2001

Ms. Carolyn K. Mitchell
Circuit Court Reporter
217 Edwards Road
Lyman, SC 29365-1208

RECEIVED
NOV. 07 2001
S.C. SUPREME COURT

Dear Ms. Mitchell:

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

The State v. Richard Bernard Moore

Indictment #: 00-GS-42-0617

County: Spartanburg

Date of Trial: October 22, 2001 (trial and sentencing)

Presiding Judge: Gary E. Clary

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 DI-4 form and include the original criminal case number (Indictment number) where the space is provided.

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Ms. Carolyn K. Mitchell
November 6, 2001
Page Two

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Thank you for your kind cooperation in this matter.

Sincerely,


Sandra R. Wise
Legal Assistant

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

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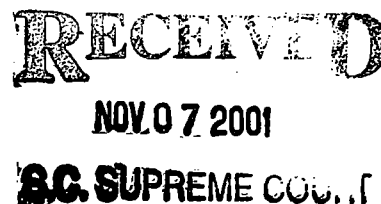
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Assistant Appellate Defenders

November 6, 2001

R. Keith Kelly, Esquire
Attorney at Law
Post Office Box 2804
Spartanburg, South Carolina 29304



Re: The State v. Richard Bernard Moore (capital case)

Dear Mr. Kelly:


As you know, our office will be assuming representation of the above named individual on his appeal to the South Carolina Supreme Court. The transcripts in this case must be requested in the very near future and I need the dates, county, judge and court reporters for **all** pre-trial, post-trial and motions hearings held in this case. At this time, I am aware of the following hearing date:

DATE	JUDGE	HEARING TYPE	CT. REP
Oct. 22, 2001	Gary E. Clary	Sentencing	Carolyn Mitchell

I am requesting that you search your records thoroughly and let me know any and all hearing dates not mentioned above as soon as possible. Please include the trial date, as well as any post-trial motions that may have been held. The Supreme Court does not like to grant extensions for missing transcripts, especially in death penalty cases, and I appreciate your immediate assistance and cooperation in this matter.

If you have any questions or need additional information, please do not hesitate to contact me. I appreciate and thank you in advance for your immediate attention to this matter.

Sincerely yours,


Sandra R. Wise
Legal Assistant

Cc: Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court

South Carolina Office of Appellate Defense

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Deputy Chief Attorney

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Assistant Appellate Defenders

November 6, 2001

Michael D. Morin, Esquire
Assistant Public Defender, Spartanburg County
258 North Church Street
Spartanburg, South Carolina 29306

RECEIVED

NOV 07 2001

S.C. SUPREME COURT

Re: The State v. Richard Bernard Moore (capital case)

Dear Mr. Morin:

As you know, our office will be assuming representation of the above named individual on his appeal to the South Carolina Supreme Court. The transcripts in this case must be requested in the very near future and I need the dates, county, judge and court reporters for **all** pre-trial, post-trial and motions hearings held in this case. At this time, I am aware of the following hearing date:

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If you have any questions or need additional information, please do not hesitate to contact me. I appreciate and thank you in advance for your immediate attention to this matter.

Sincerely yours,

Sandra R. Wise

Sandra R. Wise
Legal Assistant

Cc: Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
Gary E. Clary, Circuit Court Judge

CASE NOS. 00-GS-42-0617, 00-GS-42-0619 and
01-GS-42-2460

The State.....Respondent

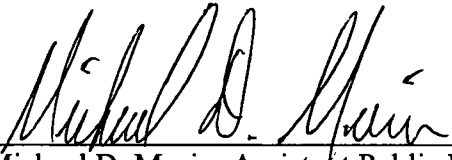
v.

Richard Bernard Moore.....Appellant

NOTICE OF APPEAL

Richard Bernard Moore appeals his sentence of Death in the above stated
Capital case imposed by the Honorable Gary E. Clary on October 22, 2001.

October 23, 2001



Michael D. Morin, Assistant Public Defender
258 N. Church Street
Spartanburg, SC 29306
(864) 596-2561
Attorney for Appellant

Other Counsel of Record:
Trey Gowdy, Solicitor
Barry Barnette, Deputy Solicitor
Donnie Willingham, Deputy Solicitor
180 Magnolia Street
Spartanburg, SC 29306
(864) 596-2575
Attorneys for Respondent

RECEIVED
OCT 25 2001
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
Gary E. Clary, Circuit Court Judge

CASE NOS. 00-GS-42-0617, 00-GS-42-0619
and 01-GS-42-2460

The State.....Respondent

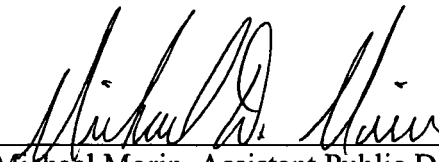
v.

Richard Bernard Moore.....Appellant

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by personally delivering a copy of the same to the State's attorney of record, Trey Gowdy, Solicitor, Barry Barnette, Deputy Solicitor and Donnie Willingham, Deputy Solicitor at their office at the Spartanburg County Judicial Center, Spartanburg, SC 29306 on October 23, 2001.

October 23, 2001


Michael Morin, Assistant Public Defender
258 N. Church Street
Spartanburg, SC 29306
(864) 596-2561
Attorney for Appellant

Other Counsel of Record:
Trey Gowdy, Solicitor
Barry Barnette, Deputy Solicitor
Donnie Willingham, Deputy Solicitor
Seventh Judicial Circuit
Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306
(864) 596-2575
Attorney for Respondent