

IN THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

JEFFREY KEITH HAVARD

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AND FILED

AUG 08 2002

CAUSE NO. 2002-KR-0141-J

M.L. VINES CIRCUIT CLERK
BY:  D.C.

**MOTION FOR TWENTY-FOUR HOUR COOLING-OFF PERIOD
BETWEEN CONCLUSION OF THE CULPABILITY PHASE
AND THE START OF ANY SENTENCING PHASE OF THIS TRIAL**

COMES NOW defendant, by and through counsel, and hereby moves this Court, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article 3, Sections 14, 23, 24, 25, 26, 28, and 29 of the Mississippi Constitution, and the other authorities cited herein, for an order granting a twenty-four hour cooling-off period between the conclusion of the guilt-innocence phase and the beginning of the possible sentencing phase of his capital murder trial. In support of this motion, defendant states:

1. The United States Supreme Court has consistently held that the decision to impose the death penalty against a defendant must be a "reasoned moral response," and cannot be arbitrary or based on passion, prejudice or caprice. Penry v. Lynaugh, 109 S.Ct. 2934, 2948 (1989). The Mississippi capital punishment scheme is to the same effect. Miss. Code Ann. SS 99-19-105 death sentence may not be result of passion or prejudice.

2. To attempt to ensure that death verdicts reflect the reasoned moral response of jurors and not passion, prejudice, or caprice, some states mandate a cooling-off period between the guilt-innocence phase and the sentencing phase of a capital murder trial. See, e.g., S.C. Code SS 16-3-20 (24-hour continuance between phases); La. C.Cr.P.Art 905 ("Not sooner than twelve hours after a verdict of guilty in a capital case, a sentencing hearing shall be conducted and a

sentence of death may be imposed”); Scull v. State, 533 So.2d 1137, 1138 (Fla. 1998) (trial court permitted twenty-four hour continuance); State v. Steffen, 31 Ohio St. 3d 111, 121, 509 N.E. 2d 383, 393 (1987) (finding three-day continuance reasonable); State v. Brown, 38 Ohio St. 3d 305, 528 N.E.2d 523 (Ohio 1988) (finding three-day continuance reasonable).

3. This cooling-off period is a sound, and constitutionally-required, procedure. It not only benefits the jurors, it also benefits defense counsel. Compare Parker v. State, 454 So. 2d 910, 912 (Miss.1984) (“due process of law necessitates a forum for the defendant to present his case within reasonable hours and under reasonable circumstances”); Thorton v. State, 369 So. 2d 505, 507 (Miss. 1979) (reversing defendant’s conviction because trial judge refused to adjourn at reasonable hour).

4. Defense counsel cannot be expected to provide effective assistance of counsel in a capital sentencing phase immediately after losing in the guilt-innocence phase; the emotional and physical requirements are too taxing. The American Bar Association has stated:

It is well established that representation of an individual in a capital case is an extraordinary responsibility placed on any lawyer, ... Counsel must not only be able to deal with the most serious crime - homicide - in the most difficult circumstances, but must also be thoroughly knowledgeable about a complex body of constitutional law and unusual procedures that do not apply in other criminal cases.

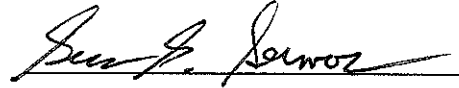
See American Bar Association, Toward A More Just And Effective System of Review In State Death Penalty Cases, at 43, 49, 50 (October 1989).

WHEREFORE, the defendant prays for an order granting a twenty-four hour cooling-off period between the conclusion of the guilt-innocence phase and the beginning of the possible sentencing phase of defendant’s capital murder trial.

Respectfully submitted,

JEFFREY KEITH HAVARD

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CERTIFICATE OF SERVICE

I, Gus G. Sermos, do hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the above and foregoing Motion to the Ronnie Harper, District Attorney, Adams County, to his regular business address of P.O. Box 1148, Natchez, MS 39121.

Certified on this, the 8 day of August, 2002.


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