

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

98CRS39580

STATE OF NORTH CAROLINA)
)
 v.)
)
 RONNIE LEE KIMBLE)
 Defendant)

MOTION
IN LIMINE
RESIDUAL DOUBT.

NOW COMES THE STATE OF NORTH CAROLINA and MOVES this Court to issue an Order prohibiting the defendant from arguing to the jury that the defendant should not receive the death penalty based upon any "residual doubt" that the jury may have after finding that the defendant is guilty of First Degree Murder beyond a reasonable doubt.

In support of this motion the State of North Carolina submits that our Supreme Court has consistently ruled that residual doubt is not a proper argument to be presented to the jury at the sentencing phase of a murder case.

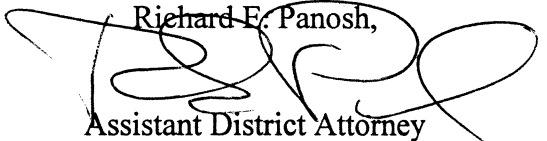
In State v. Walls, 342 N.C. 1 (1995) the court addressed this issue:

"Defendant first contends that the exclusion of Gillikin's testimony was error entitling defendant to a new trial on the ground it was mitigating evidence relevant to sentencing. Defendant argues (1) that evidence a person "is not even guilty of murder" is relevant to whether the State is permitted to execute that person, and (2) that this testimony was relevant as to one of the "circumstances of the offense." It is clear from this premise that defendant's thrust is that the question of guilt should be retried within the structure of the sentencing proceeding. Specifically, defendant argues in support that this Court has recognized "the potential value of residual doubt in the penalty phase of a capital trial." In fact, this Court has held the opposite, that residual doubt has no place in the sentencing phase. State v. Hill, 331 N.C. 387, 417 S.E.2d 765 (1992), cert. denied, ___ U.S. ___, 122 L.Ed.2d 684, reh'g denied, ___ U.S. ___, 123 L.Ed.2d 503 (1993)."

State v. Hill, 331 N.C. 387 (1992)

"[24] Trial courts should not submit lingering doubt of guilt as a mitigating circumstance. See Franklin v. Lynaugh, 487 U.S. 164, 101 L.Ed.2d 155, reh'g. denied, 487 U.S. 1263, 101 L.Ed.2d 976 (1988) (submission of doubt of guilt as mitigator not constitutionally required). Lingering or residual doubt as to the defendant's guilt does not involve the defendant's character or record, or the circumstances of the offense. Id. Therefore, residual doubt is not a relevant circumstance to be submitted in a capital sentencing proceeding."

This Thursday, September 03, 1998.

Richard E. Panosh,

Assistant District Attorney