
BRIEF IN OPPOSITION APPENDIX

Case No. 00-GS-42-617-619

Judge: Clary

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State

State's Attorneys: Gowdy; Barnette;
Willingham

Defendant: Richard Bernard Moore
B/M

Court Reporter: Linda D. Moffitt

Defense Attorneys: Morin, Kelly, Johnson

Juror No.	Name	Sex	Race	Court	Strikes		Accept
					State	Defense	
251	Joyce B. Smythe	F	W		N		N
166	Jason B. Lyda	M	W		Y	X	N
231	Pamela Robinson	F	W		Y	Y	Y
29	Jeffrey A. Blanchard	M	W		Y	Y	Y
191	Joyce Morrow	F	B		N		N
116*	Susan Hardison	F	W		Y	Y	Y
2	Douglas Alexander	M	B		N		N
230	Doris M. Robertson	F	W		Y	Y	Y
28	Don S. Blair	M	W		Y	N	N
213	Debra P. Perkins	F	W		N		N
194(F)	Karen E. Nave	F	W		Y	Y	Y
53	Jennifer M. Caston	F	W		Y	Y	Y
19	Walter M. Ballard, Jr.	M	W		Y	Y	Y
4	Lanie M. Allen	F	W		Y	N	N
227	Larry W. Ridings	M	W		Y	Y	Y
197	Gary L. New	M	W		Y	N	N
205	Ronda B. Parks	F	W		Y	N	N
288	Kelly S. West	F	W		Y	N	N
220	Tammy P. Hayes	F	W		Y	N	N
145	Charles L. Kent	M	W		N		N
192	David M. Mosley	M	W		Y	N	N
95	Michael S. Garner	M	W		Y	Y	Y
157	Debra M. Ledford	F	W		Y	Y	Y
170	Benjamin L. Martinez	M	H		Y	Y	Y
295	Michael J. Willingham	M	W		Y	N	N
85	Jeff L. Fortner	M	W		Y	N	N
265	Sandra S. Taylor	F	W		Y	Y	Y
132	Edward T. Huffman	M	W		N		N
290	Malcolm S. White	M	W		Y	N	N
94(A)	Stacy Gantt	F	W		Y	Y	Y
92	Patricia P. Gallman	F	W		Y	N	N
160(A)	Deborah J. Lindsay	F	W		Y	Y	Y

1 a motion under Batson at this time.

2 THE COURT: All right, Solicitor.

3 MR. GOWDY: Your Honor, if it please the Court, I would
4 just initially want to say for the record that the fact that
5 two African-Americans were struck, I don't believe, makes
6 out a prima facie case.

7 I would like to go on and give the race neutral
8 reasons.

9 THE COURT: Yes, sir.

10 MR. GOWDY: On Ms. Morrow, Your Honor, as the Court I
11 am sure will remember, she was one of the first jurors.
12 Deputy Willingham questioned her at some length about her
13 criminal record.

14 There was some withholding on her behalf, and but for
15 the fact that I think I dropped the ball in terms of
16 understanding how the Court qualified jurors early on, on
17 Tuesday morning, we would, of course, move to have her
18 disqualified, because her answers were, frankly, closer, I
19 thought, to Mr. Rookard's who was disqualified than they
20 were any of the other people who had an innocent
21 misrecollection.

22 She also said, Your Honor, that she thought guns were
23 used improperly. Now, there were other jurors who expressed
24 some reluctance about guns, but nobody used the word guns
25 are used in properly. That's obviously going to be an issue

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1 in this case, if the victim was armed.

2 And, in addition, Your Honor, she wanted to switch to
3 another term. She is a school teacher, as I recall, and,
4 obviously, we only want jurors who want to be here. And
5 only when she was confronted with the fact that she would
6 miss her vacation did she opt to stay.

7 But the primary reason, Your Honor, is the withholding
8 of the convictions, and only when confronted with the fact
9 that she had an alias did we begin to get any truthful
10 responses.

11 THE COURT: All right. Let's go on to the other.

12 MR. GOWDY: Your Honor, Mr. Alexander, the same
13 rationale for him would exist for him, for Mr. Huffman. Of
14 course he was a white juror that we struck. Mr. Alexander
15 has a son who was prosecuted by the Seventh Circuit
16 Solicitor's Office for murder.

17 Mr. Huffman, although it wasn't his son, had a close
18 family member that was also prosecuted for murder. This is
19 a murder case.

20 And Mr. Moore is also somebody's son. And we did not
21 want a juror who had recently had a son sent to prison,
22 although I cannot tell you for how long, for the charge of
23 murder. That is the primary reason that we struck him,
24 because he is the only juror from my recollection that
25 actually has a child that is in prison for murder.

1 I also had a notation from Monday, Your Honor, that he
2 misunderstood one of the Court's questions, and he was the
3 only juror that I had a notation that misunderstood that
4 question.

5 But the primary reason is the fact that he has a son
6 that has been convicted of murder by the Seventh Circuit
7 Solicitor's Office.

8 THE COURT: I will be glad to hear from you in regards
9 to the opposition to the strike showing that it's mere
10 pretext.

11 MR. KELLY: Could we have just one second, Your Honor?

12 THE COURT: All right.

13 (Pause.)

14 MR. MORIN: Your Honor, we can't argue with the state.

15 THE COURT: All right. Given the fact that the state
16 has presented the reasons that they have, and that in
17 accordance with our case law of the State vs. Adams, 322
18 South Carolina 114, 470 S. E. 2d., 366, a 1996 case, wherein
19 a motion is made to hold a Batson hearing where members of a
20 cognizable racial group or gender is struck and the opposing
21 party requests a hearing, that was done by the defendant.

22 The second step of the analysis requires only a race
23 neutral explanation by the proponent of the strike.

24 Mr. Morin and Mr. Kelly, it's my understanding that you
25 have accepted those reasons. I do find, by the way, that

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1 they are race neutral reasons, and, as such, there is --
2 these strikes were not just pretext. And, as such, the
3 motion is denied.

4 All right. Insofar as the manner in which we are going
5 to do this, I am going to go ahead and bring the jury panel
6 around here, and we will then call the names of the ones
7 that have been seated. They will take their place in the
8 jury box, and then we will deal with the rest of them.

9 All right. Let's bring them around.

10 (Whereupon, all qualified jurors were returned to the
11 courtroom.)

12 THE COURT: All members present, Mr. Bailiff?

13 THE BAILIFF: Yes, sir, they are.

14 THE COURT: Good afternoon, ladies and gentlemen of the
15 jury. It's good to see you again this afternoon.

16 Before we actually seat the jury in this case, has
17 there been any change in any juror's circumstance?

18 Yes, ma'am. Come forward, please. Lawyers may
19 approach.

20 (Bench conference held off the record with juror.
21 Statement presented to the Court.)

22 THE COURT: Okay. Resume your seat. Thank you, ma'am.

23 All right. Madam clerk, please call the jurors names
24 that will be seated.

25 (Whereupon, a jury was impanelled.)

Jury sworn

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1 THE COURT: All right. Anything further from the state
2 before the jury is sworn?

3 MR. GOWDY: No, sir, Your Honor.

4 THE COURT: From the defendant?

5 MR. MORIN: No, sir.

6 THE COURT: All right. Madam clerk, let's swear this
7 jury. Well, just one moment, please.

8 Ms. Nave, I'm going to ask that you take the first
9 chair here and swap seats with this lady and serve as the
10 foreperson of our jury, please, ma'am.

11 And, madam foreperson, if you and Ms. Gant and
12 Ms. Lindsay would continue to occupy the chairs that you
13 presently sit in throughout the course of this trial, the
14 remainder of the jury may sit in any other seat that's
15 available other than the foreperson and the alternate
16 chairs.

17 So, please understand that, that the foreperson will
18 sit in that chair throughout the course of the trial, and
19 the alternates will sit in their chairs throughout the
20 course of the trial.

21 You may swear the jury.

22 (Whereupon, the jury was duly sworn.)

23 THE COURT: And, if we could, have the jury custodians
24 come in, please.

25 (Whereupon, the jury custodians were presented before

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191.

MR. WILLINGHAM: Your Honor, 191, Mrs. Morrow, there is facts in here. She is a teacher at Cleveland Elementary School. This would also be a conflict for her.

Pursuant to that statute, I believe she would be eligible to be transferred.

THE COURT: Mr. Kelly.

MR. KELLY: Judge, again, I understand the Court's position, but I would submit to the Court that in her facts, which are very brief, unlike Mrs. Brewton's, she did not indicate that she is the only teacher teaching a specified subject.

We would ask the Court to entertain asking her to come and be with us.

THE COURT: I am going to have her come in, because she didn't give me a specific reason why. Maybe I can convince her to remain with us, given those facts and circumstances.

MR. KELLY: Thank you, Judge.

THE COURT: So, if she seeks to use her rights under 14-7-845, I will honor those though.

MR. KELLY: Thank you, Judge.

THE COURT: All right. 250.

MR. BARNETTE: Your Honor, the same or similar situation. Mr. Smith works for the University School, School District six; and also got a letter faxed in. I

Jury qualification

1 drivers, anyone employed as a school employee, as a
2 certified personnel at the building level who, as a result
3 of your participation here, that it would interfere with
4 your school duties or responsibilities?

5 While I cannot excuse you, I could transfer you to
6 another term of court if this particular term of court
7 presents a particular problem to you in your official duties
8 as a teacher, bus driver or other certified personnel at the
9 building level.

10 Are these those who seek that at this time?

11 Come forward, please.

12 (The following takes place at the bench with Juror
13 Number 191.)

14 THE COURT: I think you are Ms. Morrow. Is that
15 correct?

16 JUROR NUMBER 191: Yes, sir.

17 THE COURT: Yes, ma'am.

18 JUROR NUMBER 191: I am a school teacher.

19 THE COURT: Where do you teach, Ms. Morrow?

20 JUROR NUMBER 191: I travel between two schools,
21 Cleveland Elementary and Madden Elementary.

22 THE COURT: And what do you teach?

23 JUROR NUMBER 191: Physical education.

24 THE COURT: And if you are not there do they -- is
25 there something going on that would interfere with your

1 duties this week?

2 JUROR NUMBER 191: Well, I would have to get a
3 substitute, and they would have to travel.

4 THE COURT: I will transfer you to one of your vacation
5 times, whether it be spring vacation, Christmas vacation,
6 Thanksgiving vacation, summer vacation. I will let you pick
7 a time, or you can stay with us.

8 JUROR NUMBER 191: Vacation time?

9 THE COURT: That's not a very good deal, is it?

10 JUROR NUMBER 191: No, sir.

11 THE COURT: I will give you the option. You can
12 transfer to a time that will not conflict with your school
13 responsibility or stay with us.

14 JUROR NUMBER 191: I might get dismissed.

15 THE COURT: Quite possible. You never know.

16 JUROR NUMBER 191: Okay.

17 (End of proceedings at the bench.)

18 THE COURT: Ms. Morrow is going to remain with us --
19 Number 91. She didn't like me offering her some time in her
20 vacation time, and I don't blame her.

21 (The following takes place at the bench with Juror
22 Number 284.)

23 JUROR NUMBER 284: 284.

24 THE COURT: Okay. You told me that you teach. We
25 called it industrial arts when I was coming along, but you

Jury qualification

1 anything like that?

2 JUROR NUMBER 20: Well, they served time for it.

3 THE COURT: Well, the fact that you had a family
4 member, your daughter-in-law, involved in such a situation,
5 would that in any way interfere with your ability to render
6 a fair and impartial verdict for the state or the defendant
7 in this case with basing that solely upon the testimony and
8 evidence you would hear produced in this courtroom?

9 JUROR NUMBER 20: No, sir.

10 THE COURT: Are you in any way biased or prejudiced as
11 a result of that?

12 JUROR NUMBER 20: No, sir.

13 THE COURT: Thank you, ma'am. You may resume your
14 seat, Ms. Barnette.

15 (The following takes place at the bench with Juror
16 Number Two.)

17 THE COURT: You are Mr. Douglas Alexander?

18 JUROR NUMBER TWO: Yes, sir.

19 THE COURT: Yes, sir.

20 JUROR NUMBER TWO: My son is incarcerated. He's been
21 in jail now for about four years. His name is John
22 Alexander.

23 THE COURT: What's he incarcerated for?

24 JUROR NUMBER TWO: "Murder.

25 THE COURT: Was that here in Spartanburg?

Jury qualification

1 JUROR NUMBER 20: Yes, Spartanburg.

2 THE COURT: And was he tried by the solicitor's office
3 in this circuit?

4 JUROR NUMBER TWO: Uh-huh.

5 THE COURT: Would the fact that you have a son involved
6 in such a situation, Mr. Alexander, would that fact in any
7 way interfere with your ability to render a fair and
8 impartial verdict for the state or the defendant in this
9 case?

10 JUROR NUMBER TWO: No, sir.

11 THE COURT: Are you in any way biased or prejudiced as
12 a result of that?

13 JUROR NUMBER TWO: No.

14 THE COURT: Thank you, sir. You can resume your seat.
15 I appreciate you coming forward.

16 (The following takes place at the bench with Juror
17 Number 45.)

18 THE COURT: Ms. Joyce Smith.

19 JUROR NUMBER 45: Joann Burnside.

20 THE COURT: This is Number 45, gentlemen.
21 All right.

22 JUROR NUMBER 45: I have a first cousin that is doing
23 time now on a murder charge.

24 THE COURT: And that murder charge, what's that
25 person's name?

1 JUROR NUMBER 29: It was somewhere in the mid 70's.

2 THE COURT: Was that in Spartanburg?

3 JUROR NUMBER 29: In Hammond, Indiana.

4 THE COURT: And was it involving your work?

5 JUROR NUMBER 29: Yes, sir.

6 THE COURT: What type of work were you doing?

7 JUROR NUMBER 29: I was working nights in a grocery
8 store while I was going to college.

9 THE COURT: And the fact that you have been involved in
10 such a situation, would that in any way interfere with your
11 ability to render a fair and impartial verdict for the state
12 or the defendant based solely on the testimony and evidence
13 you would hear produced in this courtroom?

14 JUROR NUMBER 29: I don't believe so.

15 THE COURT: Are you in any way biased or prejudiced as
16 a result of that?

17 JUROR NUMBER 29: No, sir.

18 THE COURT: Was there a prosecution involved in that
19 case?

20 JUROR NUMBER 29: Insufficient evidence.

21 THE COURT: Okay. Thank you, sir. You can resume your
22 seat.

23 (The following takes place at the bench with Juror
24 Number 132.)

25 THE COURT: You are Mr. Huffman.

1 JUROR NUMBER 132: My brother-in-law. He was the one
2 that dropped the barbell off the bridge about, what, eight
3 years ago and killed that truck driver.

4 THE COURT: The fact that you had a brother-in-law
5 involved in such a situation, would that in any way
6 interfere with your ability to render a fair and impartial
7 verdict for either the state or the defendant in this case
8 based solely upon the testimony and evidence you would hear
9 produced in this courtroom? You need to answer out loud.

10 JUROR NUMBER 132: No.

11 THE COURT: Are you in any way biased or prejudiced as
12 a result of that?

13 JUROR NUMBER 132: No.

14 THE COURT: Thank you sir. You can resume your seat.

15 (The following takes place at the bench with Juror
16 Number 83.)

17 THE COURT: Ms. Fernandez.

18 JUROR NUMBER 83: Uh-huh.

19 THE COURT: Yes, ma'am.

20 JUROR NUMBER 83: My sister-in-law was killed this
21 year.

22 THE COURT: What was her name?

23 JUROR NUMBER 83: Jeannie Kilgore.

24 THE COURT: Kilgore. Is that here in Spartanburg?

25 JUROR NUMBER 83: No, sir. Greenville.

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1 refrained from referring to the decedent as the victim.

2 THE COURT: Yes, sir. There is no sense in introducing
3 everyone involved in this case. Either they know you or
4 they are going to know you.

5 We are here to determine whether or not these folks are
6 qualified as jurors. We are not here to educate them as to
7 any of the facts of the case.

8 They were given the name of the victim yesterday.
9 Everything else in that regard is superfluous at this point
10 in time. So let's just -- if you want to introduce your
11 cohorts, fine. But what we are here about is to determine
12 their qualifications.

13 MR. BARNETTE: Okay, Your Honor. Thank you.

14 THE COURT: Joyce Morrow, Number 191.

15 JUROR NUMBER 191, JOYCE

16 MORROW, having been first duly sworn, was voir dired
17 as follows:

18 EXAMINATION BY THE COURT

19 Q Good morning. You are Joyce Morrow, correct?

20 A Yes, sir.

21 Q Ms. Morrow, do you understand that you have been placed
22 under oath for these proceedings?

23 A Yes, sir.

24 Q And you also recall that when I excused you and your
25 colleagues yesterday that I gave you some instructions that

Jury qualification -- Number 191

1 you were not to discuss this case among yourselves or with
2 anyone else that you come in contact with; and that if
3 anyone attempted to contact you that you were to report that
4 to me upon your return to the courthouse; and that also you
5 were not to read, watch or listen to any news accounts
6 concerning this case.

7 Have there been any violations of my instructions?

8 A No, sir.

9 Q Now, over the next few minutes, Ms. Morrow, I am going
10 to be asking you some questions. Then one of the defense
11 lawyers and one of the state's lawyers will ask you some
12 questions.

13 Please keep in mind that we are not in any way
14 attempting to invade your privacy, but due to the nature of
15 the proceedings that we are about this week, it is extremely
16 important that certain questions are asked and answered.

17 Now, I know that you are a teacher, and so please keep
18 in mind that there are absolutely no right or wrong answers
19 to these question. As opposed to where you come from where
20 you have got right and wrong answers, we don't necessarily
21 have right and wrong answers here.

22 So keep in mind that no one is challenging your view.
23 We just need to know what your views are. And answer these
24 questions openly and honestly and fully.

25 Also, I want you to pay very close attention to the

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1 questions as they are presented to you, because over the
2 next few minutes we're probably going to ask you some
3 questions that you maybe have never even considered before
4 today.

5 Also, I would tell you that the lawyers and I have
6 copies of your juror questionnaire, because that was
7 extremely important to us in preparing for today.

8 Now, among the things that we are going to be talking
9 about during the next few moments will be a reference or
10 references to the word penalty, but the mere fact that I
11 even mention that word or use that word does not in any way
12 indicate anything about the defendant, Mr. Moore. He is
13 presumed in the law to be innocent. Do you understand that?

14 A Yes, sir.

15 Q Now, let's assume for a few moments that you were a
16 juror in a criminal case. Could you listen to the law,
17 accept and apply that law as I would instruct you as the
18 judge of this court even though you may disagree with that
19 law or think that it should be some other way?

20 A Yes, sir.

21 Q Could you decide this case based solely on the evidence
22 presented here in this courtroom and disregard anything that
23 you may have heard, read or seen about the case?

24 A Yes, sir.

25 Q Now, Ms. Morrow, in a criminal case the state has the

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1 burden of proving guilt. And the burden of proof that the
2 state must meet is proof beyond a reasonable doubt. And a
3 defendant has absolutely no burden, absolutely no
4 responsibility to prove himself innocent. Do you understand
5 that?

6 A Yes, sir.

7 Q Could you, depending upon the facts and evidence and
8 the law as I will instruct you in a particular case, find a
9 defendant either guilty or not guilty?

10 A Yes, sir.

11 Q Now, as you know from being here yesterday and hearing
12 me address the entire jury panel, this is a case in which
13 the State of South Carolina is seeking the death penalty.
14 And death penalty cases are what we call bifurcated trials
15 or proceedings.

16 As you know, that's kind of a ten-dollar word that
17 means that it's split into two parts, guilt phase and
18 sentencing phase.

19 Now, if you were a juror in such a case, a death
20 penalty case, and if the jury had found the defendant not
21 guilty of murder in the guilt phase, do you understand that
22 the case would end then and there would be no necessity to
23 have that second or sentencing phase of the trial?

24 A Yes, sir.

25 Q However, if you were a juror in such a case and the

Jury qualification -- Number 191

1 jury had found the defendant guilty of murder, do you then
2 understand that you would move to the second or sentencing
3 phase of the trial?

4 A Yes, sir.

5 Q Now, in that phase of the trial, Mr. Morrow, evidence
6 would be presented to the jury in the form of what we call
7 aggravating circumstances, as well as mitigating
8 circumstances.

9 Now, aggravating circumstances are facts, incidents,
10 details or occurrences which the general assembly of our
11 state has declared by law, by statute, would make worse,
12 that is to aggravate, the crime or the offense of murder.

13 In other words, when an aggravating circumstance
14 accompanies a murder, it increases the enormity or adds to
15 the injury of that crime of murder. It's a murder that's
16 committed in the commission of or in connection with another
17 crime or incident.

18 Do you understand what I am talking about when I refer
19 to an aggravating circumstance?

20 A Yes, sir.

21 Q Now, mitigating circumstances are also incidents,
22 details or occurrences which the general assembly of our
23 state has, once again, declared by law reduces the severity
24 of the offense of murder and may be considered as
25 extenuating or as reducing the degree of moral culpability

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1 or responsibility for the crime of murder.

2 Do you understand what I mean when I speak of a
3 mitigating circumstance?

4 A Yes, sir.

5 Q Now, Ms. Morrow, let's assume that you were a juror in
6 the situation of the sentencing phase of a death penalty
7 case, that's the second phase.

8 Could you, depending upon the particular facts and
9 circumstances of that case, once again, including the
10 consideration of any aggravating and mitigating
11 circumstances and the law that I would instruct you that
12 applies to that case, return a verdict or a sentence of life
13 in prison? Do you need for me to repeat that?

14 A Yes, sir.

15 Q If you were a juror in the sentencing phase of a death
16 penalty case could you, depending upon the particular facts
17 and circumstances of that case, including the consideration
18 of aggravating, as well as mitigating, circumstances and the
19 law that I would instruct you that applied to that case,
20 return a sentence of life in prison?

21 A Yes, sir.

22 Q If you were a juror in that situation could you,
23 depending upon the particular facts and circumstances of
24 that case, once again, including the consideration of
25 aggravating and mitigating circumstances and the law that I

Jury qualification -- Number 191

1 would instruct you that applied to that case, return a
2 sentence of death?

3 A Yes, sir.

4 Q Now, Ms. Marrow, you understand that there are two
5 sentencing options that are always available to the jury
6 during the sentencing phase of a death penalty trial, that
7 being life imprisonment or death.

8 A Yes, sir.

9 Q Now, Ms. Morrow, if you were chosen for service on this
10 jury, during the course of the trial you would be
11 sequestered, which, once again, is kind of a fancy word
12 meaning you would be housed in a motel for the duration of
13 the trial.

14 Now, I have no way of knowing how long this case would
15 last. I would say somewhere, seven to ten days. It may be
16 less than that. I don't think it would be any more than
17 that once we got it started.

18 Except for the personal inconvenience that you would
19 suffer, would this pose a serious danger to the health or
20 well-being of those dependent upon you or yourself?

21 A No, sir.

22 Q Thank you for responding to my questions. Would you
23 please answer any questions that Mr. Morin might have at
24 this time?

25 EXAMINATION BY MR. MORIN

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1 Q Ms. Morrow, my name is Michael Morin, and seated over
2 here is Keith Kelly and Jennifer Johnson. We represent Mr.
3 Moore in this case.

4 I noticed from the questionnaire that you list your
5 religion as Baptist. Is that correct?

6 A Yes, sir.

7 Q Do you know if your church or pastor has a position
8 regarding the death penalty?

9 A No, sir.

10 Q Okay. Have you in the past had occasion to think about
11 whether you were for or against the death penalty?

12 A Yes, sir.

13 Q Could you tell me about that?

14 A Do you mean like a particular --

15 Q No, ma'am. Just you have in the past thought about the
16 death penalty. And I am just asking you in general what
17 your thoughts were. We just want to sort of understand how
18 you think about it if you could.

19 A Well, it has a lot to do with the circumstance --

20 Q Okay.

21 A -- of the situation as to my feelings.

22 Q Okay. So it would be each case, you would have to hear
23 the evidence to make your decision.

24 A Yes, sir.

25 Q Okay. Have you had a view on the death penalty for a

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1 long time?

2 A Had a view on it?

3 Q Yeah. Have you felt like that would depend on the
4 circumstances? That's what your answer is.

5 A Yes, sir.

6 Q That's something you have held for a long time?

7 A Yes, sir.

8 Q Okay. That's all I have. Thank you.

9 MR. WILLINGHAM: May it please the Court, Your Honor.

10 EXAMINATION BY MR. WILLINGHAM

11 Q Ms. Morrow, my name is Donnie Willingham. This is
12 Barry Barnette and this is Solicitor Trey Gowdy.

13 I just want to ask you a few questions about your
14 background and about your opinion on the death penalty. The
15 judge, I believe, gave you or the Court gave you a list of
16 three different types of jurors back in the jury room for
17 you to decide what type you were.

18 A Yes, sir.

19 Q One type was given the choice in the penalty phase,
20 given the choice of death or life, they would always vote
21 for life given they had the choice.

22 The second type of juror or another type of juror was
23 given the same choice, they would always vote for death.

24 Then the third juror would be depending on the facts
25 and circumstances, they may vote for life, they may vote for

Jury qualification -- Number 191

1 death.

2 How would you classify yourself in this category, which
3 one?

4 A As juror three.

5 Q And you understand that you always have a choice in
6 sentencing. It is not required of you to do. It is not
7 mandatory to vote for the death penalty. Do you understand
8 that?

9 A Yes, sir.

10 Q It is not mandatory to impose a life sentence, do you
11 understand that?

12 A Yes, sir.

13 Q If in the penalty phase after hearing all of the facts
14 and circumstances you decide in your mind that the death
15 penalty is the appropriate punishment in this case, you
16 would be required to sign a verdict form. You and all of
17 the other jurors would have to sign their name and say, yes,
18 I believe that the death penalty is the proper punishment.

19 Do you believe that you could actually write your name
20 on a line saying that death is the appropriate punishment?

21 A If that was the verdict or the situation.

22 Q If that's your verdict, you would be required to sign
23 your name to a verdict form. Do you believe you could
24 actually physically sign your name to that?

25 A Yes, sir.

Jury qualification -- Number 191

1 Q Do you believe you could come back into the courtroom
2 if that's your verdict, depending on the circumstances and
3 evidence -- you've not heard any evidence. Once you do, if
4 you believe that's the proper verdict, could you come back
5 in this courtroom and announce out loud that you are voting
6 for the death penalty?

7 A Yes, sir.

8 Q Ms. Morrow, I don't mean to pry too much, but I do need
9 to know a few more things about your past.

10 I noticed on your juror information card there was a
11 question have you ever been convicted of a crime other than
12 a minor traffic violation. And you indicated that you had.
13 And then you followed up on your questionnaire that it was
14 --

15 THE COURT: Solicitor, I think that's you or any family
16 member, now.

17 MR. WILLINGHAM: Yes, sir.

18 THE COURT: I think you left the family-member part
19 out. I want you to make sure.

20 MR. WILLINGHAM: I apologize, Your Honor.

21 Q And then on the questionnaire it does say have you or
22 any other family member been arrested, charged with a crime
23 other than minor traffic offenses, and you indicated yes.
24 And in parenthesis you put gambling or drugs. Who was that
25 convicted of those?

Jury qualification -- Number 191

1 A Can I put what?

2 Q Let me show you what I believe is your questionnaire.
3 Question number 23, "Have you or any family member been
4 arrested or charged with a crime other than a minor traffic
5 offense?" You put yes. "If so, please explain." Who was
6 charged with what crime, gambling and drugs? Is that your
7 questionnaire?

8 A Yes, sir.

9 Q Okay. I am just trying to find out who was charged.

10 A Oh, my brother.

11 Q Your brother. Okay. So you have never been charged
12 with anything.

13 A Yes, sir.

14 Q What have you been charged with?

15 A With gambling.

16 Q Okay. When was that?

17 A It was in '85.

18 Q And --

19 A It was expunged.

20 Q Expunged?

21 A Yeah.

22 Q Okay. No other prior convictions that you are aware
23 of?

24 A No, sir.

25 Q What happened? I know you said it's already been

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1 expunged. But before it was expunged, what happened to the
2 trial? Was it a trial or did you plead guilty?

3 A No, sir.

4 Q What happened?

5 A It was tickets, ball tickets.

6 Q Okay. Forfeited, is that what happened?

7 A Yes.

8 Q Do you think because you have had this prior dealing
9 with the criminal justice system that would in any way
10 effect your ability to be fair and impartial to the state or
11 to the defense?

12 A No, sir.

13 Q Ms. Morrow, is your maiden name or prior name Atchison?

14 A Yes, sir.

15 Q Okay. And, again, I don't mean to pry more than I have
16 to, but in 1982 did you have an arrest for simple possession
17 of marijuana?

18 A In 82? Yes, sir.

19 Q And what happened to that charge?

20 A It was expunged.

21 Q But before -- you say it was expunged. What happened?

22 A It was a fine.

23 Q And you didn't have a jury trial or anything?

24 A No, sir.

25 Q You just again forfeited the bail bond?

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1 A Yes.

2 Q And then at the same time you had the ball tickets did
3 you have another possession of marijuana charge?

4 A No, sir.

5 Q You didn't have that?

6 A I did not.

7 Q Okay. Again, would that have any bearing at all on
8 your ability to be a juror?

9 A No, sir.

10 Q Those were back in 1983.

11 A Yes, sir.

12 Q Almost ten, well, almost 20 years ago. Indicated too
13 during your qualification yesterday when we asked about
14 anyone related to anybody, law, at the courthouse, you were
15 related to Judge Beatty.

16 A Yes, sir.

17 Q What's your relationship to Judge Beatty?

18 A His grandmother and my grandmother were sisters.

19 Q So y'all are second cousins or something like that?

20 A Yes, sir.

21 Q And I understand before Judge Beatty went on the bench
22 he was a defense lawyer.

23 A Yes, sir.

24 Q Would the fact that he was a defense lawyer before he
25 took the bench, would that have any bearing upon your

Jury qualification -- Number 191

1 ability to be a fair and impartial juror?

2 A No, sir.

3 Q One last set of questions, Ms. Morrow. Yesterday
4 during qualification it was my understanding that you had a
5 stepson who was killed by a fire.

6 A Killed by a fire? He was killed.

7 Q Tell me about that if you would. We didn't have any
8 knowledge of that.

9 A He was in the State of Ohio.

10 Q And what happened in that particular case? How was he
11 killed?

12 A He was with a group of guys, and someone shot in the
13 group; and he was killed.

14 Q Was it an accidental type of shooting or was it
15 criminal? Was any charges brought?

16 A There was no charges brought.

17 Q Was there a criminal investigation? Did the police
18 come out and investigate?

19 A Yes, sir.

20 Q How did that make you feel, the fact that you had a
21 stepson being killed?

22 A Well, I mean, guns, you know, used inappropriately
23 can -- wrong things can happen. And that's my feeling that,
24 you know, everyone shouldn't be allowed to carry a gun.

25 Q Okay. That's fair enough. Thank you, ma'am. I have

Jury qualification -- Number 191

1 no other questions.

2 THE COURT: Anything further from the defense?

3 MR. MORIN: Nothing.

4 THE COURT: The state?

5 MR. WILLINGHAM: No other questions, Your Honor.

6 THE COURT: Ms. Morrow, I want to thank you very much
7 for your participation here yesterday, as well as this day.

8 I find that you are qualified to serve as a potential
9 juror in this case. With that qualification comes some more
10 instruction, as if you haven't had enough already.

11 I am going to remind you, number one, that you are not
12 to discuss this case with your family, friends or anyone
13 else that you might come into contact with, with fellow
14 jurors or anyone else.

15 Also, you are not -- if anyone should attempt to
16 contact you concerning this case, I want to report that to
17 me immediately, because that is a very serious matter, and I
18 would deal with the person that attempted to contact you
19 accordingly.

20 I will, once again, strongly instruct you and remind
21 you that you are not to read, watch or listen to any news
22 accounts concerning this case. Very simply put, if you were
23 selected as a juror in this case all I would want you to
24 consider in this matter is what you see and hear in this
25 courtroom, nothing more and nothing less.

Jury qualification -- Number 191

1 Now, with my qualification of you as a potential juror
2 in this case, I'm going to tell you that you need to refer
3 to the information that you were given here yesterday
4 morning. There was a telephone number that you were given
5 yesterday that has the ability to leave a recording for
6 jurors to call and receive further instructions.

7 I want you to call back tomorrow night, that's
8 Wednesday night, after six o'clock in the afternoon, that's
9 after 6:00 p.m. There will be one of two messages left on
10 the machine at that time. It will say jurors in the case of
11 the State vs. Moore are to call back tomorrow, which would
12 be Thursday at that time, for further instructions at a
13 particular time; or jurors in the case of the State vs.
14 Moore are to report to the courthouse at a particular time
15 with your bags packed.

16 Now, when you are instructed to report back here with
17 your bags packed, I want you to leave your belongings in
18 your vehicle. Do not bring them to the courthouse.

19 If you are not selected, we are going to send you about
20 your daily activities and thank you very much for being
21 here.

22 If you are selected as a juror, then you would remain
23 with us for the duration of the trial, and the jury
24 custodians would take care of you and your vehicle.

25 Now, you need to go home and start packing for that

Jury qualification -- Number 191

1 period of time, because when you receive the call or when
2 you make the call and you're told to be back here, you need
3 to be back here at that time.

4 I look forward to seeing you later on this week.
5 Please remember to call back tomorrow after six o'clock.
6 Thank you very much.

7 THE JUROR: So call back tomorrow after 6:00 and then
8 the instructions will be --

9 THE COURT: Follow those instructions on the recording.
10 Thank you, Ms. Morrow.

11 (Whereupon, the juror was excused from the courtroom.)

12 MR. WILLINGHAM: If it please the Court, Your Honor, I
13 understand the Court has instructed the witness to report
14 back, however, the state would ask --

15 THE COURT: I asked you if you have anything further.
16 If you have something further, you ask her to step out.

17 MR. WILLINGHAM: Yes, sir. And I understand that, and
18 I indicated I had no further questions. But I did have the
19 point of law about her -- the answers she gave to my
20 questions.

21 THE COURT: Well, you can do it. But, once again,
22 Mr. Willingham, you know as well as anybody how I conduct
23 these things. If I ask you if you have anything else, if
24 you have a matter to raise about her qualifications, you ask
25 for her to be sent out.

Jury qualification -- Number 191

1 MR. WILLINGHAM: Yes, sir. And I apologize.

2 THE COURT: What's your position?

3 MR. WILLINGHAM: That she did not answer my questions
4 truthfully, Your Honor.

5 She has prior convictions, 1982, simple possession of
6 marijuana, which initially she did not acknowledge.
7 Whenever I asked about her maiden name, she did acknowledge,
8 but indicated it had been expunged, which it has not. She
9 also -- I followed up --

10 THE COURT: Well, sir, if you would present those
11 things to me, then I could consider it. I have qualified
12 her.

13 MR. WILLINGHAM: Yes, sir.

14 THE COURT: So noted. But, please, if you have got
15 something back there, I've got this list that you-all gave
16 me, but I can't make heads or tails from half of this stuff,
17 and I am not getting a full deck. So understand that.

18 If you have got something, let me have it. And let
19 them have it if they don't have it. I have got nothing.
20 And then you are wanting to come in here after the barn has
21 been locked up and the horse is gone. Mark it.

22 (Rap sheet of Juror Number 191 marked Court's Exhibit
23 Number One.)

24 THE COURT: Ms. Morrow, Number 191, is qualified
25 pursuant to Section 16-3-20 of the code.



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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 20, 2013

Mr. Richard Bernard Moore, # 6003
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472

Re: Your case

Dear Mr. Moore:

We received your letter dated December 28, 2012 and the enclosed pro se motion for leave to file a supplemental petition for writ of certiorari. In your letter, you ask if we intend to file any further arguments or a reply to the state's return. The answer is we do not intend to file any further arguments or a reply. As you are aware, the Court refused to take any action on your pro se motion by order dated January 8, 2013.

Your letter and your Motion indicate concern that we did not raise your Batson claim in the petition for writ of certiorari. We have talked about this by phone, but this presents a good opportunity to discuss it again. In the PCR court's order denying you relief, the court addressed your Batson claim. The state struck two black jurors, Morrow and Alexander. Your trial attorneys made a Batson motion, and the trial judge inquired as to the reasons for the strikes. The state provided reasons, and your trial attorney did not pursue the motion any further. Your PCR allegation is that your trial attorney should have pursued the motion. Concerning Alexander, the prosecutor struck him because his son was prosecuted for murder. Nothing in the PCR presentation indicated this information was false or that the prosecutor struck Alexander for a race-based reason. The reason was race-neutral, and no evidence was presented to indicate the stated reason was a pretext. We see no merit to raising the exercise of a preemptory strike against Alexander as an issue in your petition.

Turning to Morrow, the prosecutor stated he struck her because she failed to disclose her criminal record and she expressed a concern about the improper use of guns. The state did not strike Stacey Gantt, a white juror, who also failed to disclose a prior arrest. The PCR order stated that the state could not have struck Gantt because it had exercised its only strike against Huffman. We went through the record to be sure this was accurate because Gantt and Morrow were arguably similarly situated (one having failed to disclose an arrest, and one having failed to disclose a conviction). On page 1765 of the Appendix, the strike sheet shows the state exercised its first strike as to alternates against Edward T. Huffman. Page 1134 of the Appendix indicates that the jury was

struck, but this process is not transcribed. Thus, we were left with only the strike sheet to indicate the order of the strikes. No evidence was presented in the PCR hearing that the order listed on the strike sheet was incorrect. Further undercutting this claim is the fact that the prosecutor moved to excuse Gantt for cause during the qualifications. This occurred on pages 907-909. Thus, the prosecutor would likely have struck Gantt with a peremptory if he had any available. Ultimately, the court found Gantt qualified. We hope this provides a clear understanding of our analysis of the issue presented.

Your letter indicates your concern that the Court will not review the record, but will rely upon the factual recitation provided by the Attorney General's office. It has been our experience that the Court reads the entire records in the cases presented.

Finally, we never intentionally fail to raise a winning issue. We want to win every case and try to do so in every brief, motion, and petition that we file. We endeavor to select winning issues from the preserved issues. Not every preserved issue is a winning issue, and it is the job of an appellate attorney to choose among the preserved issues for a winning issue. This does not mean we are perfect. We make mistakes – we are human. The United States Supreme Court recognized this recently in Martinez v. Ryan, 132 S.Ct. 1309 (2012) by providing that a federal habeas corpus petitioner may overcome procedural default of an issue by showing ineffective assistance of PCR counsel. In other words, if PCR counsel was ineffective in failing to raise an issue, then the issue is considered procedural defaulted because it was not exhausted in state court. However, the federal court will allow a petitioner to raise the issue in federal court if the failure to do so in PCR was ineffective assistance of PCR counsel.

Feel free to contact us if you have any questions.

Sincerely,



Susan B. Hackett
Assistant Appellate Defender

The Supreme Court of South Carolina

Richard Bernard Moore, Petitioner,

v.

Bryan P. Stirling, Commissioner, South Carolina
Department of Corrections, Respondent.

Appellate Case No. 2020-001519

ORDER

Petitioner has filed a petition for a writ of habeas corpus and a motion to stay his execution pending resolution of the petition for a writ of habeas corpus. The State opposes the requests.

We order the parties to brief the following questions:

Was Petitioner's death sentence disproportionate to the penalty imposed in similar cases?

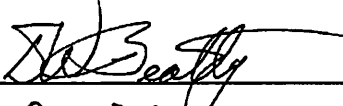
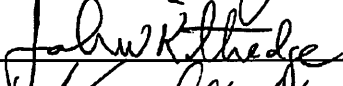



In determining the proportionality of the death sentence, should similar cases in which the death penalty was not imposed be considered?

The parties shall, within twenty (20) days of the date of this order, agree on the content of an appendix in this matter. Within thirty (30) days after agreement on the appendix, Petitioner shall serve his brief and the appendix on Respondent and file eleven (11) copies of the brief and eleven (11) copies of the appendix with the Clerk of this Court, with one copy of the brief and appendix filed unbound. Petitioner must also file with the Clerk proof that the brief has been served, and a certificate affirming the brief complies with Rule 211(b), SCACR. Within thirty (30) days after service of Petitioner's brief, Respondent shall serve his brief on Petitioner and file with the Clerk eleven (11) copies of the brief, one copy of which shall be filed unbound. Any reply brief must be served within ten (10) days after

service of Respondent's brief, with eleven (11) copies, one of which is unbound, filed with the Clerk. No extensions shall be granted.

Oral argument will be held on May 5, 2021. The parties will be advised of the time for oral argument.

Because Petitioner's execution was stayed by order of this Court dated November 30, 2020, we deny the motion to stay as moot.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
January 28, 2021

cc: Lindsey Sterling Vann, Esquire
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