

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF UNION

95-GS-44-0035

95-GS-44-0037

THE STATE

-VS-

TONY MOORE, JR.

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:
:
:

TRANSCRIPT OF RECORD

MARCH 22 - 23, 1995
UNION, SOUTH CAROLINA

B E F O R E:

THE HONORABLE COSTA M. PLEICONES, JUDGE, AND JURY.

A P P E A R A N C E S:

THOMAS POPE, ESQUIRE
MICHAEL MCMULLEN, ESQUIRE
ATTORNEYS FOR THE STATE

THOMAS WHITE, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DAPHNE D. VANN
CIRCUIT COURT REPORTER

RECEIVED

NOV 28 2022

S.C. SUPREME COURT

1 (STATE'S EXHIBITS 1 AND 2 WERE MARKED FOR
2 IDENTIFICATION ONLY.)

3 (THE FOLLOWING PROCEEDINGS TOOK PLACE IN THE
4 JUDGE'S CHAMBERS.)

5 THE COURT: ALL RIGHT. THE RECORD WILL
6 REFLECT THAT WE'RE IN CHAMBERS CONDUCTING A HEARING
7 INTO WHETHER OR NOT THE DEFENDANT IN THIS CASE -- AND
8 WHAT IS THE NAME OF THIS CASE? STATE V.?

9 MR. POPE: TONY MOORE, JR.

10 MR. WHITE: TONY MOORE, JR.

11 THE COURT: MOORE? WHETHER MR. MOORE IS
12 COMPETENT TO STAND TRIAL. A HEARING IS BEING CONDUCTED
13 AS IT'S REQUIRED TO BE CONDUCTED PURSUANT TO SECTION
14 44-23-430 OF THE CODE OF LAWS OF SOUTH CAROLINA AND WE
15 WILL PROCEED.

16 MR. POPE: MAY IT PLEASE THE COURT, YOUR
17 HONOR? MR. WHITE REPRESENTS THE DEFENDANT. THE
18 DEFENDANT IS PRESENT, YOUR HONOR. I HAVE STATE'S
19 EXHIBIT 1 AND STATE'S EXHIBIT 2 THAT MR. WHITE HAS
20 COPIES OF. STATE'S EXHIBIT 1 IS THE ORDER FOR
21 EVALUATION UNDER WHICH THE DEFENDANT WAS EVALUATED.
22 STATE'S EXHIBIT 2 IS THE REPORT FROM THE DEPARTMENT OF
23 MENTAL HEALTH. I ALSO HAVE DR. DONALD W. MORGAN
24 PRESENT WHO IS THE ASSOCIATE DIRECTOR OF THE FORENSIC
25 UNIT AT WILLIAM S. HALL PSYCHIATRIC INSTITUTE WHO

1 WHAT I'M GOING TO DO IS ASK YOU QUESTIONS IN
2 A LEADING FASHION, IN OTHER WORDS, DESIGNED TO GET A
3 ONE-WORD OR ONE-SENTENCE RESPONSE OR THE BRIEFEST
4 RESPONSE POSSIBLE BECAUSE IF YOU DO KNOW SOMETHING
5 ABOUT THIS CASE WHICH MIGHT HAVE THE EFFECT OF
6 AFFECTING OTHER PEOPLES' JUDGMENTS EITHER AGAINST THE
7 STATE OR FOR THE STATE OR AGAINST THE DEFENDANT OR FOR
8 THE DEFENDANT I DON'T WANT THAT KNOWN TO THE REMAINING
9 MEMBERS OF THE JURY PANEL. SO PLEASE ANSWER MY
10 QUESTIONS IN THE NARROW FASHION IN WHICH I PUT THEM TO
11 YOU, IF YOU HAVE TO STAND UP AT ALL. BEAR IN MIND IT
12 IS IMPORTANT THAT YOU ANSWER THESE QUESTIONS
13 TRUTHFULLY.

14 WITH THAT, THE FIRST QUESTION IS: IS THERE
15 ANY MEMBER OF THIS PANEL WHO IS RELATED BY BLOOD OR BY
16 MARRIAGE OR WHO IS ACQUAINTED WITH IN ANY WAY THE
17 DEFENDANT, TONY MOORE, JR.? AND, MR. WHITE, WITH YOUR
18 PERMISSION COULD MR. MOORE RISE AND FACE THE JURY?
19 OKAY. THANK YOU, MR. MOORE. YOU CAN BE SEATED.
20 OKAY. MR. MOORE IS REPRESENTED IN THIS CASE BY
21 ATTORNEY WHITE OF THE UNION COUNTY BAR. MR. WHITE, IF
22 YOU WOULD PLEASE STAND AND FACE THESE FOLKS. THE STATE
23 IS REPRESENTED BY YOUR ELECTED SOLICITOR, MR. POPE,
24 THOMAS POPE, AND AN ASSISTANT SOLICITOR, MS. JEFFERSON,
25 IS IT?

1 MR. POPE: YOUR HONOR, MS. JEFFERSON WILL
2 BE PARTICIPATING IN THE CASE. MR. MICHAEL MCMULLEN
3 WILL.

4 THE COURT: MR. MCMULLEN.

5 MR. POPE: YES, SIR.

6 THE COURT: OKAY. THANK YOU. IN ANY EVENT
7 IS THERE ANY MEMBER -- THOSE ARE THE LAWYERS WHO WILL
8 BE INVOLVED IN THE REPRESENTATION OF THE VARIOUS SIDES
9 OF THIS CASE. IS THERE ANY MEMBER OF THIS JURY PANEL
10 WHO IS RELATED BY BLOOD OR MARRIAGE OR WHO IS
11 ACQUAINTED WITH ANY OF THESE FOLKS? AND IF YOU ARE,
12 PLEASE STAND AND LET ME KNOW AND WE'LL DETERMINE HOW,
13 IF AT ALL, IT MIGHT AFFECT YOUR ABILITY TO BE A JUROR.

14 NOW, THE INCIDENT THAT IS THE SUBJECT OF THIS
15 CASE OR THE ALLEGED INCIDENT - BECAUSE BEAR IN MIND THIS
16 HAS TO BE PROVED - ALLEGEDLY OCCURRED HERE IN UNION
17 COUNTY ON DECEMBER 13TH, 1994, A LITTLE OVER THREE
18 MONTHS AGO AND, AGAIN, THE ALLEGATION IS THAT A YOUNG
19 WOMAN NAMED PAULA LASHAWN SMITH WAS MURDERED BY MR.
20 MOORE. IS THERE ANY MEMBER OF THIS JURY PANEL WHO HAS
21 HEARD ANYTHING AT ALL OR WHO KNOWS ANYTHING AT ALL
22 ABOUT THIS CASE FROM SOME SOURCE PRIOR TO YOUR WALKING
23 INTO THIS COURTROOM TODAY? IF YOU KNOW ANYTHING AT ALL
24 ABOUT IT, IF YOU'VE HEARD ANYTHING ABOUT IT. I DON'T
25 KNOW IF IT HAD ANY PUBLICITY. OKAY. I SEE SOME FOLK

JURY QUALIFICATION AND IMPANELING

47

1 THE COURT: ALL RIGHT. THANK YOU. YOU CAN
2 BE SEATED. OKAY, SIR. MR. GAULT, I BELIEVE IT IS?

3 JUROR GAULT: YES, SIR.

4 THE COURT: ALL RIGHT. WHO DO YOU KNOW?

5 JUROR GAULT: SMITH, JR.

6 THE COURT: WOULD THAT IMPAIR YOUR ABILITY TO
7 BE FAIR AND IMPARTIAL TO BOTH SIDES OF THE CASE?

8 JUROR GAULT: NO.

9 THE COURT: HOW DO YOU KNOW HIM?

10 JUROR GAULT: I'VE PLAYED ON A COUPLE OF
11 ALL-STAR TEAMS ON A LEAGUE, BASEBALL TEAM HERE IN
12 UNION.

13 THE COURT: OKAY. THANK YOU. SIR, YOUR
14 NAME?

15 JUROR SMITH: WOODROW SMITH.

16 THE COURT: MR. SIMS (SIC), WHO DO YOU KNOW?
17 JUNIOR OR SENIOR?

18 JUROR SMITH: SENIOR.

19 THE COURT: ALL RIGHT. THE FACT THAT HE'S
20 GOING TO BE A WITNESS IN THIS CASE, WOULD THAT IN ANY
21 WAY IMPAIR YOUR ABILITY TO BE FAIR AND IMPARTIAL TO
22 BOTH SIDES?

23 JUROR SMITH: NO, SIR.

24 THE COURT: OKAY. HOW DO YOU KNOW HIM? WORK
25 OR WHAT?

1 JUROR SMITH: FRIEND.

2 THE COURT: FRIEND?

3 JUROR SMITH: FRIENDS.

4 THE COURT: ALL RIGHT. NOW, HE'S A FRIEND

5 YOURS. HE'S GOING TO BE TESTIFYING FOR ONE SIDE.

6 YOU GOING TO BE MORE INCLINED -- ONE OF THE WAYS YOU

7 DECIDE THE FACTS IN THE CASE IS TO DETERMINE WHO'S

8 TELLING YOU THE TRUTH. ARE YOU GOING TO BE MORE

9 INCLINED TO BELIEVE HIM THAN YOU WOULD TO BELIEVE SOME

10 OTHER WITNESS SIMPLY BECAUSE HE'S YOUR FRIEND?

11 JUROR SMITH: NO.

12 THE COURT: NO?

13 JUROR SMITH: NO, SIR.

14 THE COURT: OKAY. SO YOU BELIEVE YOU CAN

15 HEAR THIS CASE AND DECIDE IT FAIRLY AND IMPARTIALLY

16 BOTH SIDES OF THE CASE?

17 JUROR SMITH: YES, SIR.

18 THE COURT: ALL RIGHT. THANK YOU, MR. SMITH.

19 SIR, YOUR NAME?

20 JUROR GIST: MCELROY GIST.

21 THE COURT: MR. GIST? OKAY. WHO DO YOU

22 KNOW? JUNIOR OR SENIOR?

23 JUROR GIST: SENIOR.

24 THE COURT: ALL RIGHT. HOW DO YOU KNOW?

25 JUROR GIST: FRIEND.

1 PREVIOUSLY BEEN CALLED FOREMAN, BUT WE NOW GROPE AROUND
2 FOR GENDER NEUTRAL TERMS ON EVERYTHING AND SO I'VE HIT
3 UPON PRESIDING JUROR. SO WHAT I WANT YOU FOLKS TO DO
4 IS I CAN EITHER APPOINT ONE OR YOU CAN ELECT YOUR OWN.
5 I PREFER THE METHOD OF LETTING A JURY ELECT ITS OWN
6 PRESIDING JUROR. IT'S WORKED RATHER WELL FOR ME IN THE
7 PAST.

8 NOW, WHAT I WANT YOU TO DO IS THE TWELVE OF
9 YOU WHO ARE ON THE MAIN JURY, ANY ONE OF THE TWELVE OF
10 YOU MAY SERVE AS THE PRESIDING JUROR AND EACH OF THE
11 TWELVE OF YOU MAY VOTE. MR. ARTHUR, YOU WOULD NOT AT
12 THIS POINT IN TIME SINCE YOU'RE THE ALTERNATE BE
13 ELIGIBLE TO SERVE AS THE PRESIDING JUROR NOR COULD YOU
14 TAKE PART IN THE VOTE. SO THE FIRST THING I WANT YOU
15 TO DO WHEN YOU GET BACK TO THE COURTROOM TO THE
16 COURTHOUSE TODAY AT 2:00 - BECAUSE THAT'S WHEN I'M
17 GOING TO WANT YOU TO COME BACK - IS TO SIT DOWN AND
18 TAKE ABOUT THREE OR FOUR MINUTES AND ELECT -- OR
19 HOWEVER LONG IT TAKES YOU AND ELECT YOUR PRESIDING
20 JUROR.

21 HERE IS THE -- THE PRESIDING JUROR IS THE
22 PERSON WHO WOULD MODERATE ANY DEBATES YOU MIGHT HAVE,
23 TABULATE THE VOTES OF THE JURY, AND SPEAK FOR THE JURY
24 IN THE EVENT THERE WAS SOMETHING THAT NEEDED TO BE SAID
25 TO ME. IT IS -- THE ONLY ADMONITION I GIVE YOU OR THE

1 ONLY GUIDANCE I GIVE YOU IN SELECTING YOUR PRESIDIN
 2 JUROR - AND I KNOW THAT SOME OF YOU HAVE JUST MET F
 3 THE FIRST TIME, BUT OTHERS OF YOU MAY KNOW ONE OTHE
 4 IS TO PLEASE ELECT A PERSON IN WHOSE JUDGMENT, WISE
 5 AND MATURITY YOU WOULD HAVE SOME FAITH. AND SO PLE
 6 DO THAT. BE HERE AT 2:00 AND I'M GOING TO HAVE THE
 7 CLERK SWEAR YOU IN AND THEN I'M GOING TO TELL YOU A
 8 COUPLE OF OTHER THINGS.

9 THE CLERK: PLEASE STAND AND RAISE YOUR F
 10 HAND.

11 (WHEREUPON, THE JURY WAS SWORN AT 10:47 A

12 THE COURT: THANK YOU. YOU'VE NOW BEEN
 13 SWORN. PLEASE BE SEATED. YOU'VE NOW BEEN SWORN AS
 14 JURORS IN THIS CASE AND IT'S IMPORTANT THAT YOU ADH
 15 TO YOUR OATH AND GIVE BOTH THE STATE AND THE DEFENI
 16 A FAIR TRIAL IN THIS CASE. A COUPLE OF THINGS AND
 17 GOING TO GIVE YOU SOME MORE PRECISE INSTRUCTIONS AT
 18 TIME THAT YOU REASSEMBLE AT 2:00, BUT RIGHT NOW THI
 19 FIRST AND MOST IMPORTANT THING THAT YOU NEED TO KNO
 20 JURORS IS THAT IN NO WAY, SHAPE, OR FORM ARE YOU
 21 ALLOWED AS JURORS UNDER OUR LAW TO DISCUSS THIS CA
 22 AMONG YOURSELVES PRIOR, THAT IS, BEFORE I GIVE YOU
 23 CHARGE ON THE LAW. ONLY THEN - AND THAT'S ONLY GO
 24 TO BE AFTER YOU'VE HEARD ALL THE EVIDENCE IN THE C
 25 CAN YOU EVEN BEGIN DISCUSSING THIS CASE OR ANY ASP

1 OF IT. AND IF YOU CAN'T DISCUSS IT AMONG YOURSELVES
2 YOU CERTAINLY CANNOT DISCUSS IT WITH SOMEBODY ELSE
3 OUTSIDE OF YOUR NUMBER BEFORE THE CASE IS -- BEFORE YOU
4 ACTUALLY DECIDE THE CASE IN THAT EVENT.

5 THIS IS IMPORTANT BECAUSE IN MY VERY BRIEF
6 TENURE AS A JUDGE WE'VE HAD TO THROW OUT A VERDICT IN
7 AN IMPORTANT CASE BECAUSE A JUROR DISCUSSED THE MATTER
8 ONGOING WITH A COCKTAIL WAITRESS WHO THEN OFFERED HER
9 OPINION ABOUT IT AND THAT RESULTED IN THAT JUROR
10 HEARING SOMETHING ABOUT THE CASE OR ABOUT THAT KIND OF
11 CASE GENERALLY THAT THE OTHER JURORS DIDN'T HEAR.
12 THERE ARE GOOD, SOUND POLICY REASONS FOR THIS AND I
13 EXHORT YOU AND I TELL YOU THAT YOU CANNOT, CANNOT,
14 DISCUSS THIS CASE AMONG YOURSELVES OR WITH ANYBODY
15 ELSE.

16 THAT MEANS ANY ASPECT OF THE CASE. AND LET
17 ME GIVE YOU AN EXAMPLE THAT MAY BE -- YOU KNOW, MAY NOT
18 HAPPEN IN THIS CASE. BUT YOU MAY HAVE A WITNESS ABOUT
19 WHOSE APPEARANCE YOU MIGHT FIND UNUSUAL. SOME
20 WITNESSES STOOD UP. THIS HAS HAPPENED BEFORE - AND I'M
21 NOT SAYING IT WILL HAPPEN IN THIS CASE - WHERE THERE'S
22 A WITNESS WHOSE APPEARANCE YOU MAY HAVE FOUND UNUSUAL,
23 A POTENTIAL WITNESS, AND EVEN COMMENTING ON THE
24 APPEARANCE OF THAT WITNESS AND DISCUSSING IT AMONG
25 YOURSELVES WOULD BE PROHIBITED BECAUSE ONE OF THE WAYS

PRELIMINARY REMARKS TO JURY BY COURT

7:

1 THAT YOU DETERMINE THE CREDIBILITY OR BELIEVABILITY
2 WITNESSES IS FROM APPEARANCE OR Demeanor. SO YOU M.
3 HAVE SAID SOMETHING INADVERTENTLY THAT INDICATED AN
4 OPINION ABOUT THE CASE. IT'S VERY IMPORTANT THAT Y
5 NOT FORM ANY OPINIONS UNTIL THE END.

6 NOW, IF YOU NEED TO COMMUNICATE ANYTHING
7 ALL WITH ME, THE ONLY APPROPRIATE OR PROPER WAY TO
8 IT WOULD BE BY WRITING A NOTE AND GIVING IT TO YOUR
9 BAILIFF AND THE BAILIFF WOULD THEN GIVE THAT NOTE T
10 AND WE WOULD BRING YOU IN HERE AND DISCUSS IT WITH
11 ON THE RECORD BECAUSE SEE EVERYTHING THAT WE SAY --
12 THERE'S REALLY NOT ANYTHING THAT'S INFORMAL AROUND
13 HERE. ANYTHING THAT WE SAY HAS GOT TO BE SAID ON T
14 RECORD RIGHT HERE IN FRONT OF THE COURT REPORTER AN
15 FRONT OF A PUBLIC TRIAL BECAUSE WE HAVE PUBLIC TRIA
16 IN THIS COUNTRY AND EVERY ASPECT OF THEM HAVE TO BE
17 PUBLIC. OKAY? SO, PLEASE, IF YOU NEED TO DISCUSS
18 SOMETHING WITH ME, DO IT IN THAT FASHION. OKAY?

19 NOW, YOU'RE GOING TO BE CALLED UPON TO RE
20 A FACTUAL JUDGMENT IN THIS CASE. I'LL TELL YOU MOF
21 ABOUT THAT WHEN YOU REASSEMBLE, BUT RIGHT NOW I'M C
22 TO LET YOU GO TILL 2:00 WHILE WE DISCUSS CERTAIN
23 PRETRIAL MATTERS. WHEN YOU COME BACK, DON'T COME I
24 THIS COURTROOM BECAUSE WE MAY, IN FACT, EVEN BE IN
25 DISCUSSING A PRETRIAL MATTER ABOUT THE CASE. YOUR