

No. \_\_\_\_\_

\_\_\_\_\_  
IN THE

SUPREME COURT OF THE UNITED STATES

2017-2018                      2018

Pro-se Rachel M. Moore — PETITIONER  
(Your Name)

vs.

Shawn Brewer — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rachel Marie Moore  
(Your Name)

3201 Bemis Rd.  
(Address)

Ypsilanti, MI. 48197  
(City, State, Zip Code)

1-734-572-9399 or 1-734-434-4457  
(Phone Number)

### QUESTION(S) PRESENTED

I. A WERE MS. MOORE'S SIXTH AMENDMENT RIGHTS OF CONFRONTATION, CROSS-EXAMINATION AND ASSISTANCE OF COUNSEL VIOLATED WHEN THE JURY ASKED THE COURT DURING DELIBERATIONS: WOULD IT BE POSSIBLE TO HAVE A F-350 TRUCK BROUGHT INTO LOOK AT THE INSIDE? THE COURT ANSWERED NO. THIS WAS CRUCIAL AS IT WAS THE VERY FOUNDATION OF MOORE'S SELF DEFENSE ARGUMENT THAT REICHOW HAD PULLED A GUN OUT OF HIS GLOVEBOX.

OR

I. B IS THIS SAME ISSUE A DUE PROCESS CLAUSE VIOLATION BECAUSE, JUROR 4, DURING DELIBERATION, AFTER THE COURT SAID, NO, TOLD THE OTHER JURORS ABOUT HER EXPERIMENT, THEN TESTIFIED OVER THREE TIMES SHE DID NOT RECALL DISCUSSING THE PREJUDICIAL EXPERIMENT WITH ANYONE OF THE EIGHT JURORS THAT TESTIFIED JUROR 4 DID TELL THEM ABOUT HER EXPERIMENT.

1. Was this juror bias against Ms. Moore?
2. Was this experiment harmless beyond a reasonable doubt?
3. Was the experiment prejudicial to Ms. Moore's case?

Pro-Se Petitioner, Rachel M. Moore believes the answer to be yes on all three questions presented above.

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at 2017 U.S. DIST. LEXIS 108534; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 01/22/2018.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.S. Const. Amendment 6

U.S.C.S. Const. Amendment 14

U.S.C.S. Const. Amendment 5

28 U.S.C. § 2254 d (2)

Constitutional Law 840.3

F.R.E. 901 a

28 U.S.C.S. § 2111 (harmless-error rule)

## STATEMENT OF THE CASE

The pro-se Petitioner, Rachel M. Moore, was convicted of first degree murder, by a jury, during a trial that lasted five days: 04/09/12-04/13/12. As soon as Moore was convicted it was brought to the attention of the attorneys, that a juror may have went to a local dealership, and conducted an investigation with a unknown salesperson, and possibly spoke about her experiment during deliberations; after the Court, had told the jury, Friday morning, "No" they could not have a F-350 truck brought into deliberations.

Immediately, Moore's, Attorney Daniel Duke, filed a motion for a Miscellaneous Hearing, held on 06/18/12 and 06/21/12 . Please see Exhibit F, Juror 4 Sherry Freed, full testimony. This is the juror who conducted the investigation and shared it with the other jurors during deliberations.

During the trial itself there was no physical evidence submitted concerning the truck. There were only pictures. The following is testimony from the Miscellaneous Hearing on 06/21/12. Juror Regina Curtis pg 7-9 Juror 4 told her she could reach the glovebox. Dawn Wyman pg 12-14 Juror 4 told her that it was difficult or unable for her to reach to glove compartment. Robert Crawford pg 16-18 only remember asking for a truck to be delivered. Marissa Paoluccipg 20-22 testified Juror 4 saying she sat down and wanted to, you know, with someone that worked at the dealership, and she mentioned buckling the seatbelt and reaching across to the glovebox. Tina Wallace pg 23 Juror 4 told her it was a distance, to reach, that she went to the dealership and looked at the F-350 truck. Foreman, Mark Steidmen: pg 30 Testified that at the start of deliberations, we asked for a few pieces of information. And one of the things we actually asked for is if an F-350 truck could be brought in so we could actually get some dimensions. And so then it came back No, but the woman I think

# STATEMENT OF THE CASE

said, well, she had actually gone to a Ford dealership and looked at the size of the truck to see if she could reach over and get a gun out of the glove compartment while seatbelted in. And she said she could. Then another, kind of a flag did go in my mind, because I remembered you saying no investigations. Then on pg 32 line 4: Steideman, testified Right. The lack of evidence was making you--had been making some judgement calls unfortunately. No disrespect to the Midland Police, but I--I thought there was extreme lack of evidence. And I thought the size of the truck would actually have been brought up during trial, because that was a physical piece that, you know, was undisputable that you could actually, you know, look at, measure, get some dimensions. During Orvosh: pg 35 couldn't remember what was said. Terry Woodcock: Testified, he did not remember what was said to him, and Tracey Mayette: pg 41 Testified that Juror 4 told her that "there was no way in her opinion that Reichow could have reached the glovebox, in her opinion it was way bigger." All but 2 of the jurors had read the newspaper or online and knew why they were there and admitted to discussing it that morning with the other jurors. Each juror claimed that juror 4 made no impact on their verdict.

Mr. Daniel Duke, Atty, for Moore, filed a Motion for New Trial, the hearing was held on July 31, 2012. In the transcripts the Prosecutor called it a "Motion by Ambush". A copy of the two cross motions were never afforded to this Petitioner with trial transcripts. A new trial was not granted.

*Pro Se Rachel Moore*  
*4-16-18*

## REASONS FOR GRANTING THE PETITION

The standard of review for Ms. Moore's case at the Remmer hearing, was: *People v Budzyn* 456 Mich 77,88 (1997). Then *Budzyn*, 88-89 states the process for determining whether reversible error has occurred:

In order to establish that the extrinsic influence was error requiring reversal, the defendant must initially prove two points. First, the defendant must prove that the jury was exposed to extraneous influences. Second, the defendant must establish that these influences presented a real and substantial possibility that they could have affected the jury's verdict. Generally, in proving this second point, the defendant will demonstrate that the extraneous influence is substantially related to a material aspect of the case and that there is a direct connection between the extrinsic material and the adverse verdict. If the defendant establishes this initial burden, the burden shifts to the people to demonstrate that the error was harmless beyond a reasonable doubt. We examine the error to determine if it is harmless beyond a reasonable doubt because the error is constitutional in nature.. The people may do so by proving that either the extraneous influence was duplicative of evidence produced at trial or the evidence of guilt was overwhelming.

*Budzyn* made clear, then, that a jury's consideration of extraneous influence not only violates three separate Sixth Amendment guarantees but also that this unusual violation is so repulsive that it is held to an especially high standard of review. The error is not excusable under the usual "harmless beyond a reasonable doubt" test but, rather if the "evidence of guilt was overwhelming."

Moore's jury verdict rested entirely on its assessment of her credibility. In making this assessment, the jury heard not only the trial evidence but also from Juror 4 that she had gone and sat in a F-350 and could not reach the glovebox. In that regard, the trial court properly found "that there is a real and substantial possibility that this information did affect the jury's verdict." Motion for New Trial, pg 28. Under *Budzyn*, then a new trial was mandated in this case unless there was "overwhelming" evidence of Moore's guilt.

This very high standard was not met. Moore's case rested on the assertion that she seized and fired the gun only after Reichow had taken it out of the glovebox and aimed it at her. No corroborating evidence, such as an eyewitness

### REASONS FOR GRANTING THE PETITION

or video recording, was available. Nor did the prosecutor offer any substantive evidence in rebuttal that Moore was lying. The prosecutor did not offer any evidence that measured the distance from the right side of the driver's seat to the glove box handle, nor did he offer any evidence as to the length of Reichow's right arm. The prosecutor did not offer any evidence that a secured seatbelt in the truck in question would in fact restrain the occupant from leaning to the side. Rather than introduce any such evidence, the prosecutor waited until closing argument to argue to the jury that Reichow could not do so.

In short, no corroborating evidence was available to Moore and the prosecutor did not offer any rebuttal evidence. Accordingly, Moore's jury would find her innocent if they believed her or guilty if they did not. And the jury was not presented with any other "overwhelming" evidence that Moore had to be lying because, as a matter of evidentiary fact, the prosecutor argued it was not possible for Reichow to reach the glovebox.

A new trial is mandated under *Budzyn*. Notwithstanding the juror's testimony that it did not affect their verdict. However it is known that Juror 4 introduced her experiment after the jurors were told "No" they could not see a F-350 truck. *Brecht v Abrahamson*, 1993 U.S. LEXIS 2981 Writ of Cert Granted.

HN 14 The test under *Kotteakos* is whether the error has substantial and injurious effect or influence in determining the jury's verdict moreover, because *Kotteakos* Standard is grounded in federal harmless-error rule, 28 USCS § 2111 federal courts may turn to an existing body of case law in applying it.

Exhibit A, pg 15 line 5-6, Juror 4- :Testified that she remembered the jurors questioning the size of the truck and people asking that, however she has no recall of telling the other jurors about her visit to the dealership, none whatsoever and I also think that even though the Court never bothered to

## REASONS FOR GRANTING THE PETITION

try and find out who the salesperson was that Juror 4 dealt with. Ms. Moore worked at that dealership for over 15 years?

In the U.S. District Court: Opinion & Order Denying Petition for Writ, it states on pg 12 that, Petitioner, Moore is not entitled to relief because she failed to show that the juror's out-of-court experiment had a substantial or injurious influence on the verdict. The lower Court stated that Moore satisfied the first prong of Budzyn. Which is that there is a real and substantial possibility that this information did affect the jury's verdict. (Motion for a New Trial pg 28.) Then in the Opinion and Order it states that the Michigan Court of Appeals found that, due to the overwhelming evidence presented, any error was harmless. Well that works both ways, because it stands to reason that there was certainly enough doubt in the mind of one juror; enough so that she conducted an experiment to get her own evidence that wasn't produced or like anyother submitted evidence.

The Std. Of Review for all 2254 petitions requires a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2254 d 2: Resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

The Constitutional Law 840.3 prohibits the State from using evidentiary presumptions in a jury trial that have the effect of relieving the state of its burden of persuasion beyond a reasonable doubt of every essential element of the crime. Prosecution vouched that it was not possible for Reichow to reach across and grab a gun and aim it at Moore, while seatbelted in, this in part lead Juror 4 to go out and collect evidence at the dealership.

Under F.R.E. 901 a, I can not tell if the photos of the truck can be con-

## REASONS FOR GRANTING THE PETITION

sidered sufficient evidence: "To support a finding that the matter in question is what its proponent claims.", the triers of fact are the jurors. The jury in and of its self prove that there was no material evidence to be had by the submitted photos, (they wanted a truck brought in), it was unreasonable for the Court to rule that the photos were sufficient evidence. In *Cavezo v Smith*, 565 U.S. 1 "It is the responsibility of the jury--not the court--to decide what conclusions should be drawn from evidence admitted at trial,". The photos, at Moore's trial did not constitute due proof or properly submitted evidence to produce a result or support a conclusion.

There is every reason to believe, based on the testimony that Juror 4 gave that she had grave uncertainty based on the unsatisfactory character of evidence or lack thereof. This prompted the investigation, which in this case turned out to be fatal to the validity of the verdict. Jurors must not be permitted to become secret witnesses by testifying and attempting to influence their peers during deliberations.

Juror 4's testimonial statements, caused Moore, to forfeit her Sixth Amendment right to counsel, this in turn violated Moore's Fifth Amendment right to testify in her defense, as she was unable to support her testimony. Moore and her Counsel could have easily showed the jury that a seatbelt does not lock until it has been fully retracted or that Reichow's glovebox was full to the top with maps and kleenex and ectra unlike the new truck that had a deep, empty glovebox. Mr. Duke could have came up with measurements if needed. If the Foreman would have given the Court a note, like he said he "thought about doing, but didn't", there could have been a curative instruction, the verdict could have turned out differently. But the Foreman wanted the truck

# REASONS FOR GRANTING THE PETITION

brought into deliberations, he is the supposed juror that asked to have the truck brought in. So I presume this would make him a bias juror who held prejudicial evidence from the Court.

If this Petitioner has met the burden of the cases that the Sixth Circuit presented in their brief: Doan v Brigano, 237 and U.S. v Corrado, 227: The defendant bears the burden of proving juror bias. That would leave the Rammer/Miscellaneous Hearing. This pro-se Petitioner has tried to bring forth clear and convincing evidence that at least two of the jurors were bias, and that Moore did not have a fair trial and I believe the Court did not want to endure the cost of another trial.

In the case of of U.S. v Nell 526 F.2d 1223, 1229 N.8 (5th Cir. 1976): The concept of implied or presumed bias arises from "situations in which the circumstance point so sharply to bias in a particular juror that even his own denials must be discounted." Also in Fahy v Connecticut, 1963 U.S. LEXIS 2064 Certiorari Granted, this case asked the question was there a reasonable possibility that the illegally obtained evidence complained of might have contributed to the conviction? Juror 4, told some jurors one version of her evidence and another version to others, she did not admit to the Court telling the jury any version of anything because she did not recall. However she did recall remembering them all talking about alot of other things on that day if you read the transcript carefully. Moore was convicted by a juror who made up her mind before she deliberated at the court house.

*Pro Se Rachel M. Moore*  
7 4.16.18

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rose Rachel M. Moore

Date: 04/16/2018



N. Woodward 4/16/18

N. WOODWARD  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WASHTENAW  
MY COMMISSION EXPIRES Aug 25, 2019  
ACTING IN COUNTY OF