

APPENDIX TO REPLY IN SUPPORT OF CERTIORARI

TABLE OF CONTENTS

Excerpts from Jury Voir Dire.....	1a
-----------------------------------	----

1 MR. HUDSON: I don't know about that.

2 THE COURT: What is your problem with that?

3 MR. HUDSON: I mean, I'd like to have few men. I
4 would like to have a representative jury. There ain't no men.

5 MR. FRANKS: You took off the two men we wanted.

6 THE COURT: The women are taking over the world:
7 The law schools, the courtrooms, the juries.

8 MR. HUDSON: I know I want a representative jury.

9 MR. FRANKS: C, D, E, F --

10 MR. HUDSON: I've been doing this a long time. We
11 sometimes spend five days on one juror.

12 THE COURT: You are not going to object to me
13 removing him at this point and putting him on another panel? You
14 want to have him call back tomorrow afternoon; is that right?

15 MR. HUDSON: Yes, sir.

16 THE COURT: And who should he call back to?

17 MR. HUDSON: He can call back to the clerk.

18 THE COURT: What would the message be at that
19 particular time?

20 MR. HUDSON: Whatever you decide at this
21 particular time. If you want to decide now, you can. That's my
22 position on it. Obviously, you're the man.

23 MR. FRANKS: He's taken the time to come down here
24 today because obviously there is some concern.

25 MR. HUDSON: Is he going to drive or fly? If he's

1 argue?

2 THE COURT: Kilpatrick and Phillips?

3 MR. IVARSSON: Yes, sir.

4 THE COURT: I've got eight for Defendant Sims and
5 four for Defendant Bell.

6 MR. ALFORD: You mean eight including these two?

7 THE COURT: Eight including these two.

8 MR. ROUPE: Your Honor, at this point what we
9 would argue would be not a reverse Batson claim, but a matter
10 that was decided, first of all, in the United States Supreme
11 Court case of JEB versus Alabama, which says that it is improper
12 for either side to strike prospective jurors simply on the basis
13 of their gender. This has been followed by North Carolina
14 Supreme Court in State of North Carolina versus Gaines, which is
15 a 1997 United States Supreme Court Case.

16 At this point, Your Honor, of the prospective
17 jurors -- before Mr. Ivarsson just did what he did, all the men
18 that have been passed to them have been challenged. Currently,
19 we have passed three to them and one of them has been challenged
20 before questioning has even been done.

21 THE COURT: That's questioning by the defendant.
22 There has been extensive questioning by the Court and by the
23 State.

24 MR. FRANKS: Your Honor, the State took off two
25 men that we thought were perfectly acceptable jurors.

1 **MR. ROUPE:** When you look at the facts now, Your
2 Honor, of the jurors seated currently, we've got seven, all of
3 them are women.

4 To this point, except for the two that Mr.
5 Ivarsson has currently left on the jury that he will question and
6 then have a chance to challenge, they have taken off all the
7 women -- all the men, excuse me. What State versus Gaines says
8 basically is what you do follow is the JEB rule, just use the
9 same rules that use for Batson.

10 We would say that that would be a prima facie case
11 at this point, that all the men that have been passed have been
12 excused, except the two that are currently in the box, which they
13 have the right to excuse. If they pass on it, Defendant Sims --
14 excuse me, Defendant Bell has the right to excuse.

15 So at this point, all the jurors we currently have
16 on, which are seven, all being women, all the men being passed
17 and then perempted except for the two that they have the right to
18 challenge, we would argue that that makes a prima facie case at
19 this point.

20 **THE COURT:** Response, Mr. Ivarsson?

21 **MR. IVARSSON:** Your Honor, the State excused Juror
22 Number 7, Laurence Mason. He was acceptable to us. The State
23 excused Number 3, Milford Hayes. He was acceptable to us.

24 Regarding Mr. Kilpatrick, Mr. Kilpatrick said that
25 he heard of the case. Mr. Kilpatrick said -- I have in my notes

1 It's not like we are getting a straight sample of
2 Onslow County jurors. We are getting a skewed sample. Our
3 challenges are in response to that.

4 **THE COURT:** All right. Anything further from the
5 State? Do you want to make any argument that the defendant's
6 explanations are a mere pretext for their removal?

7 **MR. HUDSON:** The only thing I would add as to this
8 juror -- I do not object. I think my objection is that there
9 were two or three white males they took off. One of them, if the
10 Court recalls -- one of them when asked about the death penalty,
11 if you recall, said that he thought that the death penalty --
12 that life imprisonment was more -- would be more appropriate in
13 some cases because they would be punished more severely being
14 locked up in 6-by-6 cell. They took him off, which was
15 surprising. The only reason I think they took him off was
16 because he was a white male because he sounded just like a juror
17 that they would want.

18 Anyhow, we are entitled to have a jury that's
19 representative of the community. As the Court is aware, we have
20 nothing but seven white women -- seven women on the jury now, and
21 we are entitled to have a jury that's representative of the
22 community.

23 I don't think it's fair for them to be able to
24 take off all the men off the jury, and the case law supports
25 that.

1 in the courtroom that the woman doesn't believe in the death
2 penalty. I wouldn't let her on if she was my first cousin.

3 **THE COURT:** It's called preservation of the
4 record. I put a lot of things in the record that may not have
5 anything --

6 **MR. HUDSON:** Well --

7 **THE COURT:** It's called preservation of the
8 record. If you don't want to put anything in the record after I
9 have given you that opportunity to do it, then I am not going to
10 order you do it.

11 **MR. HUDSON:** We'll do it.

12 **THE COURT:** I am now going to order you to give an
13 explanation.

14 **MR. HUDSON:** We will do it, Your Honor. Although,
15 the bad part is in that case -- I understand the purposes of it.
16 It should be. I mean, if you go back and look at my 24 years,
17 any judge will tell you, the first capital case I have ever tried
18 we had seven African American jurors. That's one thing the Court
19 says you should look at. Every judge who has ever been involved
20 in a case of mine, they put that in the record. They have dealt
21 with me for years and know I do not take people off based on sex,
22 race, or any other reason.

23 **THE COURT:** You heard what I said. I have not
24 found a prime facie case of discrimination.

25 **MR. HUDSON:** Well, the point is, Judge, we've

1 taken off jurors in this case -- I'd like the record to show
2 we've taken non-blacks off this jury because we did not feel good
3 about them, who were white. We could not taken them off if they
4 were black.

5 We have taken off several men because of issues;
6 females because we felt like we needed more men on the jury. If
7 they were African American, we could not articulate a reason.
8 That's all right if we are taking them off. We allowed one
9 African American on the jury that I would not have allowed to sit
10 on the jury if she was white.

11 This case is going in the reverse of the purpose
12 it was set out for. We can take white people off for any reason.

13 It has just gone overboard. It has gone in the
14 other direction in this case. We've got a jury with all women.
15 They have systematically taken men off. How many? Twelve,
16 fourteen men. All the male jurors we have passed, they have
17 taken off.

18 Now, we're being requested to explain when we have
19 already passed two African Americans.

20 **THE COURT:** I am just giving you an opportunity to
21 put on the record for appellate review because --

22 **MR. HUDSON:** That's we're doing.

23 **THE COURT:** -- there's been a motion made under
24 Batson. There will be for every black juror. I would just
25 suggest in the exercise of prudence that you put your explanation

1 in there. If you don't want to do that, I am not going to force
2 you to do it.

3 **MR. HUDSON:** We'll do it. What I just said is
4 part of the record. What I just did is part of the record. I
5 guess it's just personally -- I am just personally resenting
6 having to do that. It's like we have been accused of being
7 racist. I think the record clearly shows we have not been. We
8 have passed two African Americans.

9 Every time it's like I got to prove I am not
10 racist. I sort of resent that we have to do that. That's for
11 the record.

12 **THE COURT:** So noted. This is the case of United
13 States versus Batson, and there are things that we need to do in
14 these trials because of that case that we didn't have to do
15 before that case came to us from the supreme court.

16 **MR. HUDSON:** We will state the reasons, Your
17 Honor.

18 **THE COURT:** All right. Mr. Butler, I believe you
19 have given reasons for every black juror that you have
20 peremptorily challenged other than Ms. Morrow, I believe, and
21 Ms. Roach.

22 **MR. BUTLER:** Your Honor, Ms. Morrow, she indicated
23 that she has rheumatoid arthritis, which I believe she testified
24 that she gets ill on a regular occasion, that she got ill --
25 didn't know when she would get that sick and get to the point

1 that she could not come to court.

2 I am not going to go through all the details. She
3 described her illness and her sickness, how that affected her,
4 Your Honor.

5 That among -- that was the main concern. I did
6 not question her extensively because at that point she had -- she
7 has these flare-ups and the fact that -- how that would affect
8 her ability. I think she indicated that would affect her ability
9 to --

10 **THE COURT:** Wasn't that the juror that said she
11 got upset stomachs and she would be out for days and weeks at a
12 time?

13 **MR. BUTLER:** She was always in pain as a result of
14 this. It could come up and flare-up. We were simply trying --
15 we were not trying to waste any time. I asked her enough
16 questions. I felt like that she would obviously have a difficult
17 time medically to sit on the jury. I just decided to use a
18 peremptory.

19 **THE COURT:** All right.

20 **MR. BUTLER:** Ms. Roach I think is as simple as it
21 can be. I don't believe in the death penalty. I couldn't
22 believe in it. I haven't believed in it all my whole life, but
23 she said to your question she would follow the law against her
24 better judgment and that she would do that; and, Your Honor,
25 clearly, we're entitled to remove jurors who don't believe in the