

DEATH PENALTY/LIFE WITHOUT PAROLE CASE

IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

~~FILED~~
Clerk Superior Ct., Gordon County
MAR 19 2005
Brian Brannon
Clerk

STATE OF GEORGIA,)
)
)
)
v.)
)
JERRY WILLIAM JONES,)
)
_____)

Indictment No. 16471

FILED
Clerk Superior Ct., Gordon County
MAY 19 2005
Brian Brannon
Clerk

**MOTION TO DISMISS THE INDICTMENT DUE TO THE
UNCONSTITUTIONAL COMPOSITION OF THE PETIT JURY**

**THIS MOTION IS FILED FOR NOTICE PURPOSES AT THIS TIME AND WILL BE AMENDED BY
DEFENSE COUNSEL WHEN ADDITIONAL FACTUAL INVESTIGATION OF THE COMPOSITION OF THE
GRAND JURY AND THE GRAND JURY SELECTION PROCESS HAS BEEN COMPLETED.**

Jerry William Jones, through undersigned counsel, respectfully moves this Court, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, § I, ¶¶ I, II, IV, V, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XVIII, XXIV and XXVIII of the Constitution of the State of Georgia, international law, O.C.G.A. § 15-12-1, 15-12-40, 15-12-42(b)(1), 15-12-133, as well as statutory and jurisprudential authorities cited below, and all other applicable constitutional, statutory, treaty, customary international law, evolving international standards, and jurisprudential authority, that the petit jury panel not be put upon him because of the improper, unauthorized, arbitrary, and discriminatory method used to select the petit jury in this case, thereby causing the systematic underrepresentation of African-Americans, Hispanics, women, Asian-Americans, and non-voters. Additionally, Mr. Jones challenges the methods used by the Jury Commissioners to select the petit jury, particularly the general pattern of using "forced balancing" and the Voter Registration list, as well as issues

regarding the failure of petit jurors to appear in response to the summons issued by the County.

In support of this motion, counsel states:

1)

Mr. Jones is before the Court on an indictment returned on or about September 16, 2004, by a grand jury of Gordon County.

2)

Mr. Jones is on trial for his life. The State, through the District Attorney, has announced its intention to kill Mr. Jones, a human being, by lethal injection.

3)

"The fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special 'need for reliability in the determination that death is the appropriate punishment' in any capital case." Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (citations omitted). It is well established that when a defendant's life is at stake, a court must be "particularly sensitive to insure that every safeguard is observed." Gregg v. Georgia, 428 U.S. 153, 187 (1976). This heightened standard of reliability is "a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties; that death is different." Ford v. Wainwright, 477 U.S. 399, 411 (1986).

Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

Woodson v. North Carolina, 428 U.S. 280, 305 (1976). The United States Supreme Court has repeatedly emphasized the principle that because of the exceptional and irrevocable nature of the

death penalty, "extraordinary measures" are required by the Eighth and Fourteenth Amendments to ensure the reliability of decisions regarding both guilt and punishment in a capital trial. Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring). See also Beck v. Alabama, 447 U.S. 625, 637-38 (1980); Lockett v. Ohio, 438 U.S. 586, 604 (1978); and Gardner v. Florida, 430 U.S. 349, 357-58 (1977).

4)

The Sixth and Fourteenth Amendments of the United States Constitution and Article I, Section I, Paragraphs I, II, and XI of the Georgia Constitution guarantee every criminal defendant the right to a fair trial by an impartial jury. To protect this guarantee and to ensure the legitimacy of jury decisions it is essential that the process of jury selection be fair and impartial. As a result, discriminatory or arbitrary selection procedures have always caused profound constitutional concern that merits the highest order of protection, especially in a death penalty case where life and death decisions are made by the jury in Georgia. While courts have consistently held that the Constitution does not require a defendant's petit jury to be of any particular composition, a defendant's right that the petit jury venire be selected from a fair cross-section of the community is constitutionally entrenched as "fundamental to the jury trial guaranteed by the Sixth Amendment." Taylor v. Louisiana, 419 U.S. 522, 530 (1975). Thus, a constitutionally fair cross-section of the community requires that "the jury wheels, pools of names, panels or venires from which the juries are drawn must not systematically exclude distinctive groups in the community." Taylor v. Louisiana, 419 U.S. at 538; Larmon v. State, 256 Ga. 228, 345 S.E.2d 587 (1986).

5)

Courts have also recognized the constitutional right to serve as a juror based on

citizenship Strauder v. West Virginia, 100 U.S. 303 (1879). In Carter v. Jury Commission, 396 U.S. 292 (1970), the Court declared that “[p]eople excluded from juries because of their race are as much aggrieved as those indicted and tried by juries chosen under a system of racial exclusion, thereby identifying jury service with the right of citizenship. The right to sit on juries is guaranteed at the venire stage. For example, the Court in Powers v. Ohio, 499 U.S. 400 (1991), underscored the harm to excluded jurors from discriminatory selection, stating that “with the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process. Based on the importance of this right of citizenship, the Court has repeatedly declared that individuals possess the right not to be excluded from jury service based on their group membership. See Batson v. Kentucky, 475 U.S. 79 (1986); Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991); Georgia v. McCollum, 500 U.S. 42 (1992); J.E.B. v. Alabama, 517 U.S. 617 (1994). Each of these preceding cases emphasized the right of every individual to participate in the jury service and established the right of potential jurors not to be excluded based on “state-sponsored group stereotypes.” J.E.B. v. Alabama, 517 U.S. at 625. The values supporting a defendant’s right to a fair and impartial jury and the jurors’ right to nondiscriminatory selection support one another and both are necessary to achieve the goals of impartiality, accuracy and legitimacy of the jury selection system.

6)

In order to protect the constitutional right to an impartial jury and nondiscriminatory jury selection, federal courts require that jurors be selected at random from a fair cross-section of the community. 28 U.S.C. §§ 861-867 (1994) (Federal Jury Selection and Service Act). Furthermore, a majority of states follow the federal example and also mandate that juries be

randomly selected. See Wayne R. LaFave & Jerold H. Israel, *Criminal Procedure*, § 22.2(b), pg. 963 (2d. ed. 1992). In Georgia, O.C.G.A. § 15-12-42(b)(1)(2)(A) provides that jury selection process “[s]hall provide for a fair, impartial, and objective method of selecting persons for jury service.” O.C.G.A. § 15-12-42(b)(1)(4)(A) further states that the jury selection process must “provide for a fair, impartial, and objective method of selecting persons for inclusion in the trial or petit jury box with the aid of mechanical or electronic equipment and for a system of allowing jurors the greatest opportunity to serve, using the jury lists compiled by the board of jury commissioners in accordance with Code Section 15-12-40.” In order to ensure a fair, impartial, and objective method of selecting the petit jury. O.C.G.A. § 15-12-40 provides:

[a]t least biennially, unless otherwise directed by the chief judge of the superior court, the board of jury commissioners shall compile, maintain, and revise the trial jury list of upright and intelligent citizens of the county to serve as trial jurors and a petit jury list of the most experienced, intelligent, and upright citizens of the county to serve as petit jurors. In composing the trial jury list, the board of jury commissioners shall select a fairly representative cross section of the intelligent and upright citizens of the county. In composing the petit jury list, the board of jury commissions shall select a fairly representative cross section of the most experienced, intelligent, and upright citizens of the county.

Id.

7)

In addition to the random jury selection method, “blanket indiscriminate excusal of potential jurors’ who proffer excuses to serve on the jury is incompatible with Georgia law and the need to draw juries from a fair cross-section of the community.” Yates v. State, 274 Ga. 312, 315, 553 S.E.2d 563 (2001). Under O.C.G.A. § 15-12-1, the trial court or someone appointed in writing by the chief judge of the circuit and accompanied by specific guidelines may excuse a potential juror from jury duty if the juror shows good cause why he or she should be exempt

from jury duty. Id. In order to prevent intentional, discriminatory, systematic exclusion of distinct, cognizable groups and to prevent substantial deviation from the random selection method, trial judges are not allowed to grant excusals from jury duty unless he or she conducts a good cause inquiry as to why the potential juror should be exempt from jury duty. Yates v. State, 274 Ga. at 315 Failure to conduct a good cause inquiry before granting exemptions from jury service constitutes reversible error. Id.

8)

Georgia's statutory scheme for the selection of jurors is clearly based upon the principle that the petit jury will be selected in a random manner. Meders v. State, 260 Ga. 49, 389 S.E.2d 320 (1990).

[Rather than] to structure each jury [venire] . . . [t]he logical, and desirable, way to impanel an impartial and representative jury—and the method chosen by Congress—is to put together a complete list of eligible jurors and select randomly from it, on the assumption that the laws and statistics will produce representative juries most of the time. This approach safeguards the selection process from possible manipulation and ensures the independence of the jury.

Meders v. State, 260 Ga. at 54 (quoting Holland v. Illinois, 493 U.S. 474 (1990)); see also Larmon v. State, 256 Ga. at 228; Parks v. State 254 Ga. 403, 512-413, n. 5, 330 S.E.2d 686 (1985). As such, any unauthorized interference or manipulation of the random jury selection method vitiates the array of the petit jury, resulting in reversible error.

9)

All of the constitutional and statutory provisions mentioned above were clearly established to regulate the selection, drawing, and summoning of jurors in order to ensure that the defendant receives a fair and impartial jury and that no distinct, cognizable groups in the community are excluded. "A disregard of the essential and substantial provisions of the statute

will have the effect of vitiating the array” in violation of the statutory provisions governing the petit jury selection process. Meders v. State, 260 Ga. at 53. Therefore, a trial court is not free to disregard statutory requirements substantive in nature and institute a different method of empaneling juries, no matter how superior or efficient a different method may be. Id. When statutory selection procedures are violated, prejudice is presumed. Yates v. State, 274 Ga. at 315

10)

The defense will investigate whether the master list from which the accused’s Petit Jury will be selected is properly compiled in accordance with statutory procedures governing compilation of the grand jury lists.

1

In order to establish a violation of the Sixth Amendment fair cross-section rule, a defendant must demonstrate that the persons excluded are members of a distinct, identifiable, cognizable group and that the specific group is in fact underrepresented. Spivey v. State, 253 Ga. 187, 319 S.E.2d 420 (1984). In order to prove that a distinct, identifiable, cognizable group is underrepresented, the defendant must show the following: 1) that the group is defined and limited by some factor; 2) that a common thread or basic similarity in attitude, ideas, or experience runs through the group; 3) that there is a community of interest among members of the group such that the group’s interests cannot be adequately represented if the group is excluded from the jury selection process; 4) and that the underrepresented group is of a constitutionally protected class. Potts v. State, 259 Ga. 812, 813, 388 S.E.2d 678 (1990); Parks v. State, 254 Ga. 403, 330 S.E.2d 686 (1985).

12)

7

In order to prepare and present evidence on this motion and to litigate these claims adequately, Mr. Jones must have access to and copies of all materials and information used for the compilation and selection of the petit jury pool in Gordon county, all of which are in the possession and control of the Clerk of the Gordon county Superior Court. Mr. Jones's right to inspect and copy these materials is beyond dispute. Test v. United States, 420 U.S. 28 (1975) (there is an essentially "unqualified right" to inspect jury lists).

13)

WHEREFORE, for the foregoing reasons and any others that may appear to this Court after a hearing, counsel for Mr. Jones, respectfully requests the following:

1 order the Clerk of the Gordon county Superior Court to make available to Mr. Jones all information and materials pertaining to the petit jury selection process in Gordon county, including but not limited to:

all information, materials, memoranda, lists, reports, and data concerning the petit jury compilation and selection process;

all information, records, and data pertaining to the computer programming and hardware utilized by the Jury Commission to maintain jury lists, summon jurors, and other tasks relating to the petit jury selection process;

a list of the Gordon county petit jury pool members with data revealing each member's age, race, and sex;

a list of the Gordon county Jury Commissioners with data revealing each commissioner's age, race, and sex;

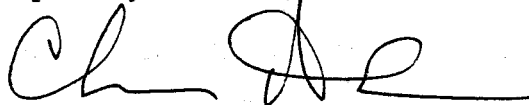
(e) All jury questionnaires, source lists, and venire lists pertaining to the petit

jury selection process.

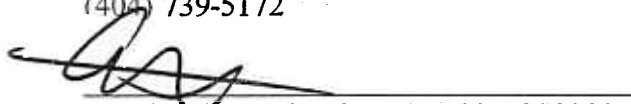
2. schedule this motion for an evidentiary hearing where additional facts may be presented in support of this claim;
3. order that the petit jury panel not be put upon the accused because of the unconstitutional composition of the master list from which any venire would be drawn;
4. order the compilation of a new petit jury pool that is composed of a fair cross-section of the community in Gordon county; and
5. order such other relief as is necessary and proper in light of the evidence presented at the hearing on this motion.

DATED this 13 day of May, 2005.

Respectfully Submitted,



Christopher Adams, State Bar No. 002725
Georgia Capital Defender
225 Peachtree Street NE Suite 900
Atlanta, Georgia 30303
(404) 739-5172



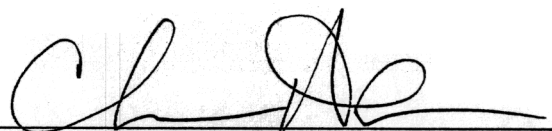
E. Michelle Drake, State Bar No. 229202
Georgia Capital Defender
225 Peachtree Street NE Suite 900
Atlanta, Georgia 30303
(404) 739-5168

Counsel for Jerry Jones

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been mailed to The Office of the District Attorney for Gordon County via first-class United States Postal Service this 19th day of May, 2005.

Respectfully Submitted,



Christopher Adams, State Bar No. 002725
Georgia Capital Defender
225 Peachtree Street NE Suite 900
Atlanta, Georgia 30303
(404) 739-5172

computer programming and hardware utilized by the Jury Commission to maintain jury lists, summon jurors, and other tasks relating to the petit jury selection process;

(c) a list of the Gordon county petit jury pool members with data revealing each member's age, race, and sex;

(d) a list of the Gordon county Jury Commissioners with data revealing each commissioner's age, race, and sex;

(e) All jury questionnaires, source lists, and venire lists pertaining to the petit jury selection process;

2. this motion shall be set down for an evidentiary hearing on the _____ day of _____, 20____ where additional facts may be presented in support of the defendant's request that (1) the Court order that the petit jury panel not be put upon the accused because of the unconstitutional composition of the master list from which any venire would be drawn; (2) the Court order the compilation of a new petit jury pool that is composed of a fair cross-section of the community in Gordon county; and (3) that the Court order such other relief as is necessary and proper in light of the evidence presented at the hearing on this motion.

