

1. Jerry Jones was indicted by the grand jury on September 16, 2004.
2. Jerry Jones is on trial for his life. The State, through the District Attorney, has announced its intention to kill Jerry Jones, a human being, by lethal injection.
3. The United States Supreme Court has repeatedly emphasized 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); Gardner v. Florida, 430 U.S. 349, 357-58 (1977); and Woodson v. North Carolina, 428 U.S. 280, 305 (1976).
4. Upon information and belief, certain distinct and cognizable groups excluded are systematically and discriminatorily excluded from serving as a grand jury foreperson in Gordon county. This practice forms a pattern and is part of a history in this county of the systematic exclusion of members of distinct, cognizable groups from the position of a grand jury foreperson. This practice existed at the time the grand jury that indicted Jerry Jones was selected.
5. The Sixth Amendment of the United States Constitution and Article I, Section I, Paragraph XI of the Georgia Constitution guarantee every criminal defendant the right to a fair trial by an impartial grand and petit jury. To protect this guarantee and to ensure the legitimacy of jury decisions it is essential that the entire process of grand and petit jury selection be fair and impartial. Discriminatory selection of the grand and petit jury is also forbidden by the equal protection and due process provisions of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section I, Paragraphs and II of the Georgia Constitution.

Strauder v. West Virginia, 433 U.S. 545 (1979); Schlesinger v. Ballard, 419 U.S. 498 (1975). The constitutional right to challenge systematic exclusion of any distinct, cognizable group from the grand and petit jury extends to all criminal defendants, regardless of their membership in the excluded group. Peters v. Kiff, 407 U.S. 493 (1972) (plurality opinion); Taylor v. Louisiana, 419 U.S. 522 (1975); United States v. Sneed 729 F.2d 1333 (11th Cir. 1984).

6. The Fifth, Sixth, and Fourteenth Amendments stand for the proposition that a defendant is entitled to have his case screened by a grand jury from which no distinct, cognizable group has been improperly excluded. What these constitutional principles and requirements mean, in the context of this case, is that Jerry Jones is entitled to a foreperson selection process from which no distinct, cognizable group is excluded based on unconstitutional discriminatory factors. While Jerry Jones is not entitled to any particular race or sex, he is entitled to at least the possibility of having members of distinct and cognizable groups serve as a foreperson. The United States Supreme Court in Rose v. Mitchell 443 U.S. at 551-552 recognized that “discrimination with regard to the selection of only the [grand jury] foreman requires that a subsequent conviction be set aside, just as if the discrimination proved had tainted the selection of the entire grand jury venire.”¹ Thus, identical to the selection of the grand and petit jury, criminal defendants are entitled to a foreperson selection process from which no distinct, cognizable group is excluded on the basis of unconstitutional discriminatory factors. Rose v. Mitchell, 443 U.S. 545, (1979). If convictions must be set aside because of taint of the grand jury, there is absolutely no logical or fair reason to differentiate the result because discrimination

¹The United States Supreme Court in Hobby v. United States, 468 U.S. 339 (1984) did not overrule Rose v. Mitchell, 443 U.S. 545 (1979). Rose v. Mitchell involved a black defendant challenging the discriminatory exclusion of his race from the Tennessee grand jury foreperson selection process under the equal protection clause. Hobby v. United States, involved a white male defendant challenging the discriminatory exclusion of African Americans and women from the federal grand jury selection process under the due process clause.

affected the selection of the foreperson. United State v. Cross, 708 F.2d 631 (11th Cir. 1983); Guice v. Fortenberry, 661 F.2d 496, 499 (5th Cir. 1981).

7. In order to establish a prima facie case of discrimination in the selection process of the grand jury foreperson under the equal protection or due process analysis, a criminal defendant must prove three elements. Rose v. Mitchell, 443 U.S. at 565; Spivey v. State, 253 Ga. 187, 319 S.E.2d 420 (1984). First, the defendant must prove that a distinct, cognizable group was treated differently under the laws as written or as applied. Rose v. Mitchell, 443 U.S. at 565. Second, the defendant must show the existence of a significant disparity between the proportion of the group serving in the challenged capacity and the proportion of that group in the general population over a significant period of time. Id. Finally, the defendant must prove that the selection procedure is susceptible of abuse or is discriminatory. Id. If the defendant establishes a prima facie case of discrimination in the selection of the foreperson, the burden shifts to the State to rebut the presumption of intentional discrimination. Id. Mere protestations or conclusory statements of officials in charge of the selection process that no discriminatory intent motivated the selection of the foreperson is insufficient to rebut the defendant's prima facie case. Id.

8. Discrimination in the selection of the foreperson in this case not only distorts the overall composition of the grand jury but also irreparably taints the operation of the indictment process because of the significant role played by the grand jury foreperson. In Georgia, the foreperson is selected from the membership of each grand jury. O.C.G.A. § 15-12-67. The foreperson may be appointed by a superior court judge or by the grand jury selected. Id. In this case, the foreperson was selected by unconstitutional means

9. The United States Supreme Court as repeatedly emphasized that discrimination in

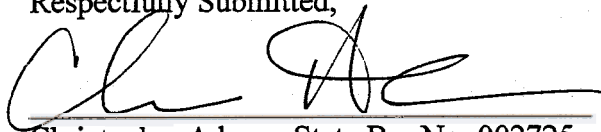
the judicial process “not only violates Constitution and the laws enacted under it but is at war with basic concepts of democratic society and representative government. Smith v. Texas, 358 U.S. 28 (1958) (footnote omitted). “The injury is not limited to the defendant—there is injury to the jury system, to the law as institution, to the community at large, and to the democratic ideal reflected in the processes of courts. Ballard v. United States, 329 U.S. 87 (1946) As such, a rule that absolutely forbids discrimination in the administration of justice requires an effective remedy. For “if constitutional rights are to be anything more than mere announcements, then some measurable consequence must be attached to their violation. United States v. Calandra, 414 U.S. 338 (1974) (Brennan, J. dissenting, joined by Marshall, J. The most effective, efficient, and fair remedy in light of the defendant’s and society’s interests in this case, is dismissal of the indictment. Here, dismissing the indictment does not render Jerry Jones immune from prosecution. It is subsequent reindictment barred, for the prosecutor is merely forced to reindict Jerry Jones by procedures which conform to constitutional requirements. Thus, the minimal costs associated with dismissing the indictment in this case is substantially outweighed by the strong policy the Supreme Court has consistently recognized in combating unconstitutional discrimination in the administration of justice.

10. In order to prepare and present evidence in support of this motion and to litigate these claims adequately Jerry Jones must have access to and copies of all materials and information regarding the selection of the grand jury foreperson in Gordon County all of which are in the possession and control of the Clerk of the Gordon county Superior Court. Jerry Jones’ 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).

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

- 1 order the Clerk of the Gordon County Superior Court to make available to Jerry Jones all information and materials pertaining to the grand jury foreperson selection process in Gordon county, including but not limited to:
 - a) lists of all of the grand jury forepersons appointed in the past ten years, with data revealing each member's race, age, and sex; and
 - b) all information, materials, memoranda, and reports concerning the selection of the grand jury foreperson in the past ten years.
2. schedule this motion for an evidentiary hearing where additional facts may be presented in support of this claim; and
3. dismiss the indictment returned against Jerry Jones because of the unconstitutional selection of the grand jury foreperson in this case.

Respectfully Submitted,



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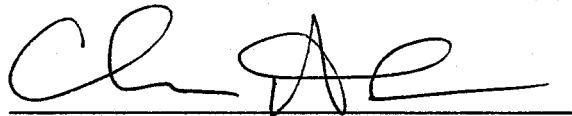
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Counsel for Jerry Jones

5/19/05

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



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IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

_____)
STATE OF GEORGIA,)
) Indictment No. 16471
)
)
v.)
)
JERRY WILLIAM JONES,)
_____)

ORDER

Upon consideration of Mr. Jones's *Motion to Dismiss The Indictment Due to The Discriminatory Selection of The Grand Jury Foreperson*, the Court being otherwise sufficiently advised, and good grounds appearing therefore,

IT IS HEREBY ORDERED AND DECREED, that

the Clerk of the Gordon County Superior Court shall make available to Mr. all information and materials pertaining to the grand jury foreperson selection process in Gordon county, including but not limited to:

- a) lists of all of the grand jury forepersons appointed in the past ten years, with data revealing each member's race, age, and sex; and
- b) all information, materials, memoranda, and reports concerning the selection of the grand jury foreperson in the past ten years;

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) this Court dismiss the indictment returned against

Mr. Jones because of the Unconstitutional selection of the grand jury foreperson
in this case.

SO ORDERED this ____ day of _____, 20__

The Honorable G. Carey Nelson
Judge, Gordon County Superior Court
State of Georgia

Prepared by:
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