

Americans, Hispanics, women, Asian-Americans, and non-voters. Additionally, Mr. challenges the methods used by the Jury Commissioners to select the grand jury, particularly the general pattern of using "forced balancing" and the Voter Registration list and drivers license lists, as well as issues regarding the failure of grand 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 July 24, 2002, 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. "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). Furthermore, 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). Our system of justice must go "to extraordinary measures to ensure that the prisoner [facing the possibility of being] sentenced to be executed is afforded process that will guarantee, as much as is humanly possible, that the sentence was not imposed out of whim, passion, prejudice, or mistake." Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring) (emphasis added). These "extraordinary measures" must be taken at both stages of any capital trial.

v. Alabama, 447 U.S. 625, 638 (1980).

3)

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 grand jury to be of any particular composition, a defendant's right that the grand 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).

4)

Courts have also recognized the constitutional right to serve as a juror based on citizenship. Strauder v. West Virginia, 100 U.S. 303, 307 (1879). In Carter v. Jury Commission, 396 U.S. 320, 329 (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 as a right of citizenship. The right to serve as jurors is guaranteed at the venire stage. For example, the Court in Powers v. Ohio, 499 U.S. 400, 407 (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 individual jurors possess the right not to be excluded from juries based on his or her group membership. See Batson v. Kentucky, 476 U.S. 79 (1986); Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991); Georgia v. McCollum, 505 U.S. 42 (1992); J.E.B. v. Alabama, 51 U.S. 127 (1994). Each of preceding cases emphasized the right of every individual to participate in the jury service and established a per se right of potential jurors not to be excluded based on “state-sponsored group stereotypes.” J.E.B. v. Alabama, 511 U.S. at 128. The values supporting a defendant’s right to receive 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 in the jury selection system.

5)

In order to protect the constitutional right to an impartial jury and nondiscriminatory jury selection, federal courts require that juries be “selected at random from a fair cross-section of the community.” 28 U.S.C. §§ 1861-1878 (1994) (Federal Jury Selection and Service). Furthermore, a majority of states follow the federal example and also mandate that juries be randomly selected. See Wayne R. LaFare & 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 grand 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 grand 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 grand jury list of the most experienced, intelligent, and upright citizens of the county to serve as grand 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 grand 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.

6)

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.

7)

Georgia's statutory scheme for the selection of jurors is clearly based upon the principle that the grand 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 grand jury, resulting in reversible error.

8)

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

grand 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.

9)

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

10)

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).

1)

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 grand 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).

12)

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 grand jury selection process in Gordon county, including but not limited to:
 - (a) all information, materials, memoranda, lists, reports, and data concerning the grand 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 grand jury selection process;
a list of the Gordon county grand 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 grand jury selection process.
2. schedule this motion for an evidentiary hearing where additional facts may be presented in support of this claim;
 3. dismiss the indictment returned against Mr. Jones because of the unconstitutional composition of the grand jury;
 4. order the compilation of a new grand 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 12 day of May, 2005.

Respectfully Submitted,



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DEATH PENALTY/LIFE WITHOUT PAROLE CASE

IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,

Indictment No. 16471

JERRY WILLIAM JONES,

**MOTION TO DISMISS THE INDICTMENT DUE TO
ABUSE OF THE GRAND JURY PROCESS**

ORDER

Upon consideration of Mr. Jones's **MOTION TO DISMISS THE INDICTMENT DUE TO THE UNCONSTITUTIONAL COMPOSITION OF THE GRAND JURY**, 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. Jones all information and materials pertaining to the grand jury selection process in Gordon county, including but not limited to:

1. all information, materials, memoranda, lists, reports, and data concerning the grand jury compilation and selection process;
2. 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 grand jury selection process;
3. a list of the Gordon county grand jury pool members with data revealing each member's age, race, and sex;
4. a list of the Gordon county Jury Commissioners with data revealing each

4. a list of the Gordon county Jury Commissioners with data revealing each commissioner's age, race, and sex;
 5. All jury questionnaires, source lists, and venire lists pertaining to the grand jury selection process;
- B. 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 indictment be dismissed because of the unconstitutional composition of the grand jury; (2) this Court order the compilation of a new grand jury pool that is composed of a fair cross-section of the community in Gordon county; and (3) this Court order such other relief as is necessary and proper in light of the evidence presented at the hearing on this motion.

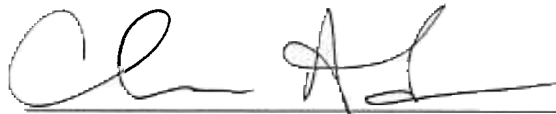
SO ORDERED this ____ day of _____, 20__

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

Prepared by:
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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.



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