

FILED
Clerk Superior Ct., Gordon County

NOV 06 2006

Brian Brannon
Clerk

IN THE SUPERIOR COURT OF
GORDON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA : CRIMINAL ACTION
: :
VS. : FILE NUMBER 04-CR-16471
: :
JERRY WILLIAM JONES, :
: :
DEFENDANT :

**ORDER ON DEFENDANT'S MOTION TO DISMISS THE INDICTMENT
DUE TO THE UNCONSTITUTIONAL COMPOSITION OF THE TRAVEL JURY
(MOTION #10)**

The above and foregoing motion came regularly before the Court for a hearing on October 27, 2006, with the Defendant and his counsel and counsel for the State all being present, and after hearing evidence and argument of counsel, the Court enters the following order:

The Traverse Jury list was revised in June, 2006, with the assistance of Computer Business Services (CBS). The Traverse Jury Certificate, executed on June 23, 2006, shows a disparity regarding recognized groups as less than 1.0 % in each category.

The testimony presented to the Court shows that persons over 70, convicted felons, deceased individuals, and individuals who had moved were deleted from the combined non-duplicative list compiled from the voters list and the drivers license list. A percentage of individuals from the drivers license list was added to the voters list to compile the master list. From this list the traverse jury list was compiled utilizing "forced balancing" to reflect Gordon County's population.

Defendant contends that the County should not have utilized forced balancing because it was unnecessary if one adjusts the population for citizenship (D12), the results of which mirrors the

County's population with such modifier.

Defendant also contends that individuals over 70 should not have been automatically excluded as apparently was the instruction from CBS to the County. As Defendant contends, individuals over 70 should only have been excused upon their request. The Defendant further contends that the County should have made a determination concerning convicted felons as to whether their civil rights had been restored, which apparently was not done. However, there was no showing by the Defendant of how many convicted felons had been excluded and how many, if any, have had their civil rights restored.

Additionally, Defendant complains that not all of the non-duplicative names from the drivers list were added to the voter list when creating the master list.

DISCUSSION

"A defendant has no right to a jury selected from a list which perfectly mirrors the percentage structure of the community. What is required is a list which represents a fair cross-section of the community and which is not the product of intentional racial or sexual discrimination." *Al-Amin v. The State*, 278 Ga. 74, 597 SE2d 332 (2004) reconsideration den. Citing *Cook v. State*, 255 Ga. 565 (11)340 SE2d 843 (1986).

Even if all of the excluded individuals were added to the master list, the percentage change is statistically insignificant. The jury commissioners followed the statutory mandate and made use of both the voters list and the drivers list. Created therefrom was a traverse jury list with an absolute disparity of substantially less than 5%.

JUDGMENT

Therefore, after considering all of the evidence and argument of counsel, Defendant's motion

challenging the traverse jury array is **DENIED**.

SO ORDERED this 15th day of November, 2006.



G. CAREY NELSON, JUDGE
SUPERIOR COURT OF GORDON COUNTY, GEORGIA