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Murder case appeal deemed significant in legal circles

By **Katie Nichols** ([Contact](#)) | Selma Times-Journal

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A 20-year-old murder case going back for retrial in Dallas County has significant implications in the legal community.

More than 20 years ago, an all-white jury convicted Earl Jerome McGahee, a black man, for killing his ex-wife Connie Brown, and a nursing student, Cassandra Lee.

But Wednesday a three-judge panel out of the 11th District U.S. Court of Appeals overturned the conviction and ordered McGahee tried again.

The three jurists based their decision in this appeal on what they called an “astonishing pattern” of discrimination that kept black people off McGahee’s jury and violated his 14th Amendment rights to equal protection under the law.

University of Alabama School of Law Professor Montreç D. Carodine specializes in race and law and labeled the ruling by the court as significant.

“It is remarkable that the 11th district granted a habeas corpus petition,” she said. “It doesn’t happen that often.”

Inmates convicted of felonies generally file habeas corpus petitions to gain an appearance before a judge to argue a wrongful conviction or sentence.

Before becoming a professor, Carodine worked as a law clerk for the 5th District Court of Appeals, based in New Orleans. She saw prisoners file thousands of habeas petitions daily, most of which were not granted by the court.

But in terms of McGahee’s case, the court apparently found reason to believe prosecutors acted on a racial basis, she said.

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“The language in the appeal is remarkable too,” Carodine said. “It says it is ‘astonishing’ that there would be no African-American jurors on this case considering the large percentage of African-Americans in the area.”

McGahee’s appeal was based on a case *Batson v. Kentucky*. Carodine said the *Batson* ruling was a landmark case from April 30, 1986, which came right before McGahee’s Sept. 12, 1986 conviction. This timeline allows the ruling to stand.

“*Batson* ruled prosecution cannot strike jurors solely based on race and that they must give a race-neutral reason why they want to remove the juror,” she said. “According to the court records, all African-American potential jurors were removed for very general reasons.”

During jury selection for McGahee, 66 possible jurors remained and of those 24 were black. Throughout the jury selection process all 24 were removed from the jury.

Following the removal of the 24 black jurors, defense attorney Bruce Boynton made the *Batson* challenge. The prosecutor said he would explain in detail at a later time why each juror was dismissed. Court records that accompanied the appeal show Boynton agreed on good faith, but no mention was made of the explanations given by the prosecutor.

In a telephone interview Friday, Boynton said, “I remember there being some reasons being given in court. I specifically remember Rev. [Willis] Wright, the president of Concordia College, being dismissed for legitimate reasons.”

Boynton said the district attorney at that time was Roy Johnson, but two other assisted on the case, one of them was Ed Green, who later became district attorney.

Boynton said he no longer represents McGahee.

McGahee filed multiple times for appeal using the *Batson* ruling. Each time the appeal was denied until Wednesday.

The present day retrial could prove to be slow going in the beginning.

District Attorney Michael Jackson said he would have to examine the evidence and become familiar with the case before the retrial.

“It might be a little difficult because witnesses might have died or moved,” he said. “We will just have to put it back together to seek justice for the family.”

Bryan Stevenson of the Montgomery-based Equal Justice Initiative represented McGahee in the appeal.



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"The evidence of racial bias during jury selection in this case is pretty remarkable and is a terrible reflection on criminal justice in Alabama," Stevenson said via e-mail Wednesday to The Associated Press. "An all-white jury in a majority black county was accomplished after the prosecutor excluded every black person qualified for jury selection. The derogatory explanations offered by the prosecutor to justify the exclusion of African-Americans presented a serious issue, especially in a death penalty case."

Alabama's Court of Criminal Appeals overturned McGahee's death sentence based on improper introduction of victim impact testimony during the sentencing phase of his trial. But the court denied McGahee's claims under *Batson vs. Kentucky*, a 1986 Supreme Court decision that excluding jurors based on race violates the equal protection guarantees of the 14th Amendment.

After a second sentencing hearing, a new jury returned a 10-2 verdict for life imprisonment with no parole. The trial judge rejected the jury verdict and sentenced McGahee to death, and the sentence was upheld on direct appeal.

Following other unsuccessful bids, McGahee filed a petition for writ of habeas corpus in the Southern District of Alabama in 2005, including his *Batson* claim. The district court denied the petition, a decision that was reversed by the 11th Circuit ruling.

AP contributed to this story.

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