

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

*

v.

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Case No. CC-00-0000

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JOE CLIENT.

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**MOTION CHALLENGING THE COMPOSITION OF THE VENIRE DUE TO
SYSTEMATIC UNDERREPRESENTATION OF COGNIZABLE GROUPS**

Joe Client respectfully moves this Court to strike the jury venire that has been summoned, and order that a new venire be summoned from a master jury list that adequately represents African Americans, women, and other constitutionally cognizable groups. In support of his motion, Mr. Client submits the following:

1. Mr. Client has been charged with capital murder and the State is seeking the death penalty.

2. Upon information and belief, the master list from which the current venire has been selected and from which Mr. Client's petit jury will be chosen is unconstitutionally composed because it systematically underrepresents African Americans, women, and other constitutionally cognizable groups that make up Maycomb County.

I. UNDERREPRESENTATION OF AFRICAN AMERICANS IN THE JURY POOL UNDERMINES THE CONSTITUTIONALITY AND LAWFULNESS OF MR. CLIENT'S TRIAL.

3. African Americans constitute 40 percent of the population of Maycomb County and the population that is eligible for jury service is 38 percent of the county. In this case, the venire has been drawn from a jury pool that is only 20 percent African American. The absolute disparity between the percentage of eligible black prospective jurors in the county and the percentage of black prospective jurors in the venire is 20 percent. See Expert's Affidavit (attached).

4. Additionally, a calculation of comparative disparity demonstrates that nearly 50 percent of the black community in Maycomb County is not represented in the jury venire that has been summoned to try the case of Mr. Client. Such a disparity between the community and the pool is constitutionally significant. Duren v. Missouri, 439 U.S. 357 (1979); see also Berghuis v. Smith, 559 U.S. 314, 323 (2010); Swain v. Alabama, 380 U.S.

202 (1965), overruled on other grounds by *Batson v. Kentucky*, 476 U.S. 79 (1986); *Hernandez v. Texas*, 347 U.S. 475 (1954).

5. African Americans constitute a cognizable, distinctive class of persons in this community under both state and federal law. *Strauder v. West Virginia*, 100 U.S. 303 (1879). The exclusion of African Americans from the jury pool violates Mr. Client’s right to a jury comprised of a fair cross-section of the community, *Duren v. Missouri*, 439 U.S. 357 (1979), and denies him equal protection of the law. *J.E.B. v. Alabama*, 511 U.S. 127 (1994); *Vasquez v. Hillery*, 474 U.S. 254 (1986); *Castaneda v. Partida*, 430 U.S. 482 (1977).

6. Underrepresentation of African Americans in the jury pool also violates Alabama Code sections 12-16-55 and 12-16-56 and the Alabama Constitution. Alabama Code law specifically states:

It is the policy of this state that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity, in accordance with this article, to be considered for jury service in this state and an obligation to serve as jurors when summoned for that purpose.

Ala. Code § 12-16-55. Section 12-16-55 further provides that “[a] citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin or economic status.”

II. AFRICAN AMERICANS ARE UNDERREPRESENTED IN MAYCOMB COUNTY JURIES.

7. A review of the current and recent pool data regarding Maycomb County jury selection reveals statistically significant underrepresentation of African Americans. Data maintained by the Alabama Administrative Office of Courts (AOC) relating to Maycomb County jury pools in 2015, 2016, and 2017 reveal that the African American community has been underrepresented by at least 50 percent during the past three years. See Expert’s Affidavit. The absolute and comparative disparities relating to the 2015, 2016, and 2017 jury pools are statistically significant. See Expert’s Affidavit. Proof of underrepresentation for comparable amounts of time has been treated as creating a presumption of systematic exclusion. See, e.g., *Machetti v. Linahan*, 679 F.2d 236, 241-42 (11th Cir. 1982) (twenty-month period of underrepresentation sufficient to show pattern). The current venire selected for this case exacerbates the existing problems with the unrepresentative lists being used in Maycomb County.

III. THIS COURT SHOULD ORDER THAT A NEW VENIRE BE SUMMONED FOR JURY SERVICE IN THIS CASE.

8. The defendant, Mr. Client, is an African American man accused of shooting a white woman. Interracial crimes make the obligation to avoid racial bias in jury selection crucial, particularly in capital cases. See Turner v. Murray, 476 U.S. 28 (1986) (requiring special voir dire procedures to eliminate racial bias in capital cases involving interracial crimes); see also Buck v. Davis, 137 S. Ct. 759, 776 (2017) (expert testimony that defendant was more likely to commit acts of violence in future because he is black “appealed to a powerful racial stereotype — that of black men as ‘violence prone’” and unconstitutionally provided support for death sentence based on race) (citing Turner, 476 U.S. at 35).

8. The exclusion of African Americans and other cognizable groups undermines the overall integrity of criminal proceedings. Johnson v. California, 545 U.S. 162, 172 (2005) (“the overriding interest in eradicating discrimination from our civil institutions suffers whenever an individual is excluded from making a significant contribution to governance on account of his race”); Batson v. Kentucky, 476 U.S. 79, 87 (1986) (“selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice”).

9. African Americans in Maycomb County have a right to serve on juries in numbers equal to their population and their rights are violated by jury pools or venires that systematically underrepresent them and by discriminatory use of peremptory strikes. “The Fourteenth Amendment’s mandate that race discrimination be eliminated from all official acts and proceedings of the State is most compelling in the judicial system.” Powers v. Ohio, 499 U.S. 400, 415 (1991). “[T]he command of Batson is to eliminate, not merely to minimize, racial discrimination in jury selection.” United States v. David, 803 F.2d 1567, 1571 (11th Cir. 1986). Whether through peremptory strikes or underrepresentation in the jury pool or venire, the unexplained exclusion of African Americans is unconstitutional. See Bui v. Haley, 321 F.3d 1304 (11th Cir. 2003); Yancey v. State, 813 So. 2d 1 (Ala. Crim. App. 2001). This is particularly true where the selection of a new venire or other remedy is available.

10. Because the State is seeking the death penalty, “[t]he fundamental respect for humanity” underlying the Eighth Amendment’s prohibition against cruel and unusual punishment gives rise to a special need for reliability in determining whether the death penalty is appropriate. Johnson v. Mississippi, 486 U.S. 578, 584 (1988); see also Ex parte Monk, 557 So. 2d 832, 836-37 (Ala. 1989) (death penalty is “special circumstance” that justifies expansion of constitutional rights).

11. Denial of this motion will deprive Mr. Client of his rights to due process, equal protection, a fair trial by a jury drawn from a fair cross-section of the community, and a reliable sentencing as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law. This Court should order that a new venire be summoned for jury service in this case and that underrepresentation be eliminated in jury pools for Maycomb County, Alabama.

For these reasons, Joe Client respectfully requests that this Court:

- a. dismiss the current jury venire because of discrimination in the selection of the current Maycomb County jury pool; and
- b. order the compilation of a new jury venire drawn from a pool comprised of a fair cross-section of the community.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/12/17]