1980 S.C. Op. Atty. Gen. 64 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-32, 1980 WL 81916

Office of the Attorney General

State of South Carolina
Opinion No. 80-32
March 17, 1980

***1 SUBJECT: Magistrates, Juries.**

There are no statutory or constitutional provisions mandating the appearance of all prospective jurors for a jury trial in magistrate's court in order that they may be examined on their voir dire prior to a defendant exercising any peremptory challenges or challenges for cause. However a defendant does have the right to examine on their voir dire those jurors selected to hear the case to ascertain a basis for a challenge for cause.

TO: Honorable Raymond A. Holley
Aiken County Magistrate

QUESTION:

Is it required that all prospective jurors be summoned to magistrate's court in order that a defendant may examine them on their voir dire prior to exercising peremptory challenges or challenges for cause?

AUTHORITIES:

Act No. 164 of 1979, Part III–A, Section 1; State v. Campbell, 35 S.C. 28, 14 S.E. 292 (1892); State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1972); State v. Brown, 240 S.C. 357, 126 S.E.2d 1 (1962); Section 14–7–1020, Code of Laws of South Carolina, 1976.

DISCUSSION:

In a letter to this Office you indicated that a local attorney has insisted that the entire jury venire be present at the time the actual jurors and the alternates are selected for a particular trial. You referenced his insistence on having ‘all thirty jurors' present when striking the jury. Therefore, it appears that your question is whether prospective jurors may be examined on their voir dire prior to exercising peremptory challenges or challenges for cause.

Peremptory challenges are supplemental to challenges for cause in that they enable a defendant to strike potential jurors without reason. However, the South Carolina Supreme Court in State v. Campbell, 35 S.C. 28, 14 S.E. 292 (1892), indicated that the right to peremptory challenges to a jury involves the right to reject a certain number of potential jurors but does not enable the defendant to select a jury. Thus, the Legislature may limit the number of peremptory challenges without interfering with any constitutional rights. State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1973). However, the opportunity for challenge for cause continues throughout the jury selection process.

Please be advised that the present effective procedure for magistrate's jury selection, Act No. 164 of 1979, Part III–A, Section 1, which will apply until July 1, 1980, Indicates that the names of twenty potential jurors, and not thirty as referenced in your letter, are to be drawn. Such section specifically provides:

‘(2) person appointed by the magistrate who is not connected with the trial of the case for either party shall draw out of Compartment A of the jury box twenty names, and the list of names so drawn shall be delivered to each party, or the attorney for each party.’

It is further provided that:
‘(t)he names drawn pursuant to either items (3) or (4) shall be placed in a box or hat and individual names randomly drawn out one at a time until six jurors and two alternates are selected. Each party shall have a maximum of six peremptory challenges and such other challenges for cause as the court may permit . . ..’

***2** Furthermore, such section states that:
‘(p)arties shall exercise peremptory challenges in advance of the trial date, and only persons selected to serve and alternates shall be summoned for the trial.’

There are no statutory provisions expressly mandating that the entire jury venire be present when the six jurors and two alternates are selected for a particular trial in a magistrate's court. However, it is specifically provided that if at the time set for trial any of the jurors selected ‘. . . have been excused or disqualified by the court. . .’ additional jurors are to be selected in the manner provided. Thus it is apparent that examination of the jurors selected to hear a case on their voir dire is contemplated if timely motion is made. Therefore, when timely request for examination is made, it is the opinion of this Office that a defendant does have the right to examine on voir dire those jurors ultimately selected pursuant to the above section to hear a case. If during examination, the magistrate determines that a juror would be unable to give the defendant a fair trial or that the juror is biased or prejudiced in some way, he should be dismissed. If the defendant is successful in his challenge and it is necessary that juror replacements be made, none of the jury panel should be sworn and seated until the full jury has been selected and properly qualified as specified by the referenced section.

As stated, there are no statutory or constitutional provisions expressly permitting voir dire examination of jurors in magistrate's courts. However, as referenced, Act No. 164 of 1979 does provide for the selection of additional jurors when any of the jurors previously selected are excused or disqualified. The South Carolina Supreme Court in State v. Brown, 240 S.C. 357, 126 S.E.2d 1 (1962), was concerned with the question of:
‘. . . whether error was committed in the absolute refusal to make any examination of the prospective jurors as to possible bias or prejudice, when such request was timely made.’ (Emphasis added).

The Court in their opinion reversing the convictions of several defendants stated:
‘. . . when timely request was made, it became the duty of the Magistrate to make reasonable inquiry of the jurors to determine whether bias or prejudice existed, to the end that the constitutional right of the litigants to a trial by an impartial jury could by an impartial jury could be secured.’ (Emphasis added). 240 S.C. at 365–366.

Questions as to possible bias or prejudice are bases for challenges for cause as to circuit court juries. Section 14–7–1020, Code of Laws of South Carolina, 1976. Therefore, it appears that the right to voir dire examination clearly exists as to those jurors selected to hear a case. When timely request for examination is made, the magistrate should assure himself that each juror selected to hear a case is unbiased, fair and impartial. Any requests for any additional specific questions should be evaluated by the magistrate as to whether such questions should be permitted or not.

CONCLUSION:

***3** While there are no constitutional or statutory provisions requiring all prospective jurors to appear to be examined on their voir dire prior to a defendant exercising peremptory challenges or challenges for cause, a defendant does have the right to examine on their voir dire the jurors ultimately selected to consider a case to ascertain the basis for a challenge for cause.

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