1978 S.C. Op. Atty. Gen. 103 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-73, 1978 WL 22554

Office of the Attorney General

State of South Carolina
Opinion No. 78-73
April 18, 1978

***1 SUBJECT: Magistrates, Juries**

It is the better practice to summon the entire jury venire, the eighteen potential jurors, to magistrate's court to enable a defendant to examine all jurors on their voir dire prior to the defendant exercising his rights as to peremptory challenges, there are no constitutional or statutory requirements for such a practice. However, a defendant does have the right to examine on their voir dire the six jurors ultimately selected pursuant to Section 22–3–780, Code of Laws of South Carolina, 1976, to ascertain the basis for a challenge for cause.

TO: Robert L. Hallman, Esquire
Attorney at Law

QUESTION:

Is it required that the entire jury venire, the eighteen potential jurors, be summoned to magistrate's court in order that a defendant may examine all potential jurors on their voir dire prior to his exercising any rights insofar as peremptory challenges are concerned?

STATUTES AND CASES:

Section 22–3–780, Code of Laws of South Carolina, 1976;

Section 14–7–1020, Code of Laws of South Carolina, 1976;

State v. Brown, 240 S.C. 357, 126 S.E.2d 1 (1962);

State v. Campbell, 35 S.C. 28, 145 S.E. 292 (1892);

State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1972).

DISCUSSION:

Section 22–3–780, Code of Laws of South Carolina, 1976, defines the procedure for selecting jurors in a magistrate's court as follows:

In criminal causes in a magistrate's court a jury shall be selected in the following manner: The sheriff, constable or other officer appointed by the magistrate shall write and fold up eighteen ballots, each containing the name of a respectable voter of the vicinity. He shall deliver the ballots to the magistrate, who shall put them into a box and shake them together, and the officer shall draw out one, and the person so drawn shall be one of the jury unless challenged by either party. The officer shall thus proceed until he shall have drawn six who shall not have been challenged. Neither party shall be allowed more than six challenges. But if the first twelve drawn shall be challenged and the parties do not agree to a choice, the last six shall be the jury. When any of the six jurors so drawn cannot be had or are disqualified by law to act in the case and

the parties do not supply the vacancy by agreement, the officer shall proceed to prepare, in the manner before directed, ballots for three times the number thus deficient, which shall be disposed of and drawn as above provided.

There is no question that the defendant has a right to examine the six jurors selected to hear a case on their voir dire. The South Carolina Supreme Court in State v. Brown, 240 S.C. 357, 126 S.E.2d 1 (1962) indicated that such examination
. . . is a guaranty of the right of the parties to an impartial jury. And, 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 . . ..

***2** By your letter requesting this opinion, you indicated that you have requested the magistrate to summon the entire venire, the eighteen potential jurors, to court on the date of trial to enable the defendant to exercise his right to peremptory challenges and any challenges for cause. While this Office has previously stated that it is the better practice to summon the entire jury venire, the eighteen potential jurors, to magistrate's court to enable a defendant to examine all jurors on their voir dire prior to the defendant exercising his rights as to peremptory challenges, there are no constitutional or statutory requirements for such a practice. Upon close reading of the above section, it is the opinion of this Office that a defendant does have the right to examine on voir dire those six jurors ultimately selected pursuant to Section 22–3–780, supra, 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. All jury replacements would be made in accordance with Section 22–3–780, supra, which states that if such a vacancy is not supplied by agreement, there shall be prepared in the proper manner ballots three times the number of jurors deficient which would be drawn in accordance with the procedure outlined in the above section. Additionally, 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 stated, your request was made to enable the defendant to exercise his right to peremptory challenges and challenges for cause. Thus, two varying challenges are concerned, those peremptory and those 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.C. 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 SC 488, 201 S.E.2d 118 (1972). However, the opportunity for challenge for cause continues throughout the jury selection process. Thus, when the six potential jurors have been selected, they may be examined on their voir dire prior to being sworn.

There is no statutory provision expressly permitting voir dire examination of jurors in magistrate's courts. However, Section 22–3–780, supra, does provide that ‘when any of the six jurors so drawn cannot be had or are disqualified by law to act in the case . . .’ the vacancies are to be filled. Furthermore, the South Carolina Supreme Court in State v. Brown, supra, was faced with the question of
***3** . . . 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 be secured. (Emphasis added).

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. Based on the above, it appears that the right it voir dire examination does exist as to those six prospective 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:

While this Office has previously stated that it is the better practice to summon the entire jury venire, the eighteen potential jurors, to magistrate's court to enable a defendant to examine all jurors on their voir dire prior to the defendant exercising his rights as to peremptory challenges, there are no constitutional or statutory requirements for such a practice. However, a defendant does have the right to examine on their voir dire the six jurors ultimately selected pursuant to Section 22–3–780, Code of Laws of South Carolina, 1976, to ascertain the basis for a challenge for cause.

Charles H. Richardson
Assistant Attorney General

1978 S.C. Op. Atty. Gen. 103 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-73, 1978 WL 22554