IN THE FIFTY-FIFTH JUDICIAL CIRCUIT COURT MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA

vs.

AARON ACCUSED

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* Case No. CC-05-000

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## MOTION CHALLENGING THE COMPOSITION OF THE PETIT JURY FOR SYSTEMATIC

**UNDERREPRESENTATION OF COGNIZABLE GROUPS**

Aaron Accused respectfully moves this Court, pursuant to Sections 1 and 7 of Article I of the Alabama Constitution, sections 12-16-55 and 12-15-56 of the Code of Alabama of 1975, and the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, 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 black persons, women and other constitutionally cognizable groups. Upon information and belief, the master list from which the current venire has been selected, and from which the accused's petit jury will be chosen, systematically underrepresents African­ Americans, women, and other constitutionally cognizable groups, in relation to these groups' representation in Maycomb County. In support of his motion, Mr. Accused submits the following:

* 1. Mr. Accused is before the Court on an indictment returned on February 28, 2008, by a grand jury of Maycomb County.
  2. Upon information and belief, the master list from which the accused's Petit Jury will be selected is unconstitutionally composed in that it underrepresents black persons, women and other constitutionally cognizable groups that make up Maycomb County. This underrepresentation of black persons and women from the jury pool is statistically significant and unreasonable in relation to the number of such persons in the community. In addition, this underrepresentation of African-Americans, women and other cognizable groups forms a part of the history and pattern of discriminatory and systematic exclusion of such groups from the jury pools in Maycomb County.
  3. African-Americans constitute 40% of the population of Maycomb County. Women constitute 54% of the population ofMaycomb County. The pool from which the grand jury that indicted Aaron Accused was selected systematically underrepresented these cognizable groups. The exclusion of African-Americans, women, and other cognizable groups from jury pools violates Mr. Accused's federal constitutional rights. Duren v. Missouri, 439 U.S. 357 (1979); Castaneda v. Partida, 430 U.S. 482 (1977).
  4. The jury pool in this case is only 20% black. The absolute disparity between the community and the pool is constitutionally significant. Swain v. Alabama, 380 U.S. 202 (1965); Hernandezv. Texas, 347 U.S. 475 (1954); United States v. Grisham, 63 F.3d 1074 (11 th Cir. 1995); Ross v. Kemp. 785 F.2d 1467 (11 th Cir. 1986).
  5. Black persons and women constitute a cognizable, distinctive class of persons in this community under both state and federal law. J.E.B. v. Alabama, 511 U.S. 127 (1994) (women); Taylorv. Louisiana, 419 U.S. 522 (1975) (women); Strauderv. West Virginia, 100 U.S. 303 (1879) (black persons). The exclusion of African-Americans and women from the jury pools violates Mr. Accused's right to a jury comprised of a fair cross section of the community, nuren v. Missouri, 439 U.S. 357 (1979}, and denies him the equal protection of the law. J.E.B. v. Alabama, 511 U.S. 127 (1994); Vasguezv. Hillery, 474 U.S. 254 (1986); Castaneda v. Partida, 430 U.S. 482 (1977). Underrepresentation of black persons and women also violates sections 12-16-55 and 12-16-56 of the Alabama Code of 1975, as well as the Alabama Constitution.

Request for Discovery

* 1. In order to obtain and present evidence on this motion and to litigate these claims adequately, Mr. Accused must have access to and copies of all materials and information used for jury selection in Maycomb County, Alabama, all of which are in the possession and control of the Clerk of the Maycomb County Circuit Court or State officials. Mr. Accused's right to inspect and copy these materials is beyond dispute. Test v. United States, 420 U.S. 28, 30 (1975) (there is an essentially "unqualified right" to inspect jury lists); United States v. Orlando-Figueroa, 229 F.3d 33 (l8t Cir. 2000); Government of Canal Zone v. Davis, 592 F.2d 887 (5 th Cir. 1979); United States v. Causey. No. H-040025, 2004 WL 1243912 (S.D. Tex. May 25, 2004).

WHEREFORE, Mr. Accused respectfully moves that this Court:

1. order the Clerk of the Maycomb County Circuit Court or State officials in control or possession of such information to make available to Mr. Accused all information and materials necessary to an adequate and complete determination of the validity of this challenge to the petit jury, including, but not limited to:
   1. lists of the Maycomb County petit jury pool members from and including 1999 through 2008 with data revealing each member's age, race, and sex;
   2. a list of the Maycomb County Jury Commissioners from and including 1999 through 2008 with data revealing each commissioner's age, race, and sex; and,
   3. all information, materials, memoranda, and reports concerning the selection process, including, but not limited to, jury questionnaires, source lists, and venire lists.
2. schedule this motion for an evidentiary hearing where additional facts may be presented in support of this claim;
3. order that the petit jury which has been drawn from a master jury list which underrepresents African-Americans, women and other cognizable groups be struck;
4. order the compilation of a new jury venire drawn from a pool comprised of a fair cross-section of the community; and
5. order such other relief as is necessa..-ry and proper in light of the evidence presented at the hearing on this motion.

Respectfully submitted,

Linda Lawyer

122 Commerce Street

Maycomb, AL 36104

(123) 456-7890

*Counsel for Mr. Accused*

[CERTIFICATE OF SERVICE OMITTED]

IN THE FIFTY-FIFTH JUDICIAL CIRCUIT COURT MAYCOMB COUNTY, ALABAMA

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## MEMORANDUM IN SUPPORT OF THE MOTION CHALLENGING THE COMPOSITION OF THE PETIT JURY FOR

**SYSTEMATIC UNDERREPRESENTATION OF COGNIZABLE GROUPS**

Aaron Accused has challenged the composition of the jury venire from which a jury will be struck to hear evidence at his capital trial scheduled for February 25, 2008. See Motion Challenging the Composition of the Petit Jury for Systematic Underrepresentation of Cognizable Groups. Despite the fact that Maycomb County is 44% black with an eligible black population for jury service that is 40% of the county, the jury venire that has been summoned for jury service in Mr. Accused's case is only 20% black. 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%. This means that nearly 50% of the black community is not represented in the jury venire that has been summoned to try the case of Mr. Accused.

The grossly unrepresentative jury venire summoned for trial in this case is the product of a jury pool that underrepresents African-Americans in a statistically significant manner. The pool from which jury venires are selected and the process of selection is also accompanied by other defects that require this Court to order, at a minimum, that a newvenire be summoned for jury service in this case.

1. A History of Underrepresentation of Black People in Maycomb County Juries Dictates that Relief be Granted.

There is a history of underrepresentation of black people in Maycomb County juries. A review of the current and recent pool data regarding Maycomb County jury selection reveals statistically significant underrepresentation of black people. Data relating to the current 2005 jury pool maintained by the Alabama Administrative Office of Courts (AOC) reveals that 50% of the black community is not represented in the current pool of eligible jurors for Maycomb County. See Expert's Affidavit. The absolute and comparative disparities relating to the 2003 and 2005 jury pools are statistically significant. See Expert's Affidavit (attached).

The current venire selected for this case exacerbates the problems with the unrepresentative lists currently being used.

1. This Court Should Order that ANew Venire be Summoned for Jury Service in This Case

The defendant, Mr. Accused, is an African-American who has been 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). To avoid these problems, this Court should order that a newvenire be summoned that adequately represents black people.

The exclusion of black people and other cognizable groups undermines the integrity of criminal proceedings. Johnson v. California, 125 S.Ct. 2410, 2418 (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) ("procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice"). Black people in Maycomb County have a right to serve on juries in numbers equal to their population without jury pools or venires that systematically underrepresent them and without 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 injury selection." United States v. David, 803 F.2d 1567, 1571 (11 th Cir. 1986). Whether through peremptory strikes or underrepresentation in the jury pool or venire, the unexplained exclusion of black people is unconstitutional. See Snyder v. Louisiana, 128 S. Ct 1203, 1212 (2008) (peremptory strikes based in substantial part on discriminatory intent with no trial court explanation regarding juror or prosecutor demeanor, along with prosecutor's non-race-neutral reasons, provides exceptional circumstances and removes high trial court deference); Bui v. Haley, 321 F.3d 1304 (11 th 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 some other remedy might avoid the problem.

Absent the selection of a new venire, Mr. Accused's rights under the Sixth, Eighth and Fourteenth Amendments and Alabama state law will be violated. The exclusion of African-Americans from the jury violates an accused's right to a jury composed of a fair cross-section of the community, Duren v. Missouri, 439 U.S. 357 (1979), and denies him the equal protection of the law. Vasquez v. Hillery, 474 U.S. 254 (1986); Castaneda v. Partida, 430 U.S. 482 (1977). Underrepresentation of black persons also violates Alabama Code sections 12-16-55 and 12-16-56 (1975) and the Alabama Con stitu tion .1

1 Alabama Code section 12-16-55 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 article, to be considered for jury service in this state and an obligation to serve as jurors when summoned for that purpose.

This Court should order that a newvenire be summoned for jury service in this case and that underrepresentation be eliminated in jury pools for Maycomb County, Alabama.

Respectfully submitted,

Linda Lawyer

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Maycomb, AL 36104

(123) 456-7890

*Counsel for Mr. Accused*

[CERTIFICATE OF SERVICE OMITTED]

Ala. Code§ 12-16-55 (1975). Section 12-16-55 of the Alabama Code further states, "[a] citizen shall not be excluded from jury service in this state on account ofrace, color, religion, sex, national origin or economic status." Ala. Code§ 12-16-55 (1975).

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**ORDER**

Case No. CC-05-000

Upon consideration of Defendant Aaron Accused's Motion Challenging the Composition of the Petit Jury for Systematic Underrepresentation of Cognizable Groups, and Defendant's Motion for Order for Access to, Inspection of, and Copying of All Jury System Records, it is hereby

ORDERED that Defendant Aaron Accused be allowed to conduct discovery concerning his claim of underrepresentation in the petit jury pool; and it is further

ORDERED that the Clerk of the Maycomb County Circuit Court or State officials in control or possession of such information shall make available to Mr. Accused all information and materials necessary to an adequate and complete determination of the validity of this challenge to the petit jury, including, but not limited to: ·

* 1. lists of the Maycomb County petit jury pool members from and including 1999 through 2008 with data revealing each member's age, race, and sex;
  2. a list of the Maycomb County Jury Commissioners from and including 1999 through 2008 with data revealing each commissioner's age, race, and sex; and,
  3. all information, materials, memoranda, and reports concerning the selection process, including, but not limited to, jury questionnaires, source lists, and venire lists.

It is further ORDERED that, at a time agreed to by the Jury Commission staff and the defense, a representative of the defense shall be provided with access to all records pertaining to the jury selection system in Maycomb County; that, at that time, the director of computer services, or his or her equivalent, shall be available to

explain all phases of the computer programming and hardware utilized by the Jury Commission to maintain jury lists, summon jurors, and perform other tasks; and that

the representative of the defense shall be permitted to copy any and all records, programming and data utilized in the maintenance of the master lists, the periodic summoning of jurors, and any other aspects of the selection process.

It is further ORDERED that, upon the completion of discovery within\_ days of the date of this Order, the Court will schedule a hearing on Defendant's Motion Challenging the Composition of the Petit Jury Pool, at which Mr. Accused will be permitted to present evidence in support of his motion.

Done and ordered this

day of

, 2008. CIRCUIT JUDGE