

Supreme Court of Kentucky

FROM THE 30th JUDICIAL CIRCUIT
JEFFERSON CIRCUIT COURT, DIVISION 6
CASE NO. 14-CR-3357

COMMONWEALTH OF KENTUCKY

PLAINTIFF

V.

CHAUNCEY SELLERS

DEFENDANT

ORDER DISQUALIFYING JUDGE

This matter is before the Chief Justice upon the certification of the Clerk of the Jefferson Circuit Court of the affidavit and motion of Commonwealth's Attorney Tom Wine to disqualify the Honorable Olu A. Stevens, 30th Judicial Circuit, Division 6, from presiding in the above-styled criminal action.

Upon review of the affidavit and motion, the Chief Justice finds and determines that the Commonwealth's Attorney has demonstrated disqualifying circumstances that require the appointment of a special judge under KRS 26A.020.

Accordingly, the Chief Justice orders as follows:

- (1) The request to disqualify the Honorable Olu A. Stevens is GRANTED without prejudice to any party to seek appellate review after entry of a final judgment; and
- (2) The Honorable A.C. McCay Chauvin, Chief Regional Circuit Judge of the Metro Region, is designated to appoint a special judge to assume the powers and responsibilities of the regular

judge to preside in the above-styled criminal matter until completion; and

- (3) The Jefferson Circuit Clerk shall place a copy of this order in the record of the above-styled civil actions and serve copies of this order on all counsel and parties not represented by counsel.

Entered this 17th day of November 2015.


CHIEF JUSTICE

Copies to: A.C. McKay Chauvin, Chief Regional Circuit Judge
Olu A. Stevens, 30th Judicial Circuit, Division 6
Clerk, Jefferson Circuit Court

Supreme Court of Kentucky

FROM THE 30th JUDICIAL CIRCUIT
JEFFERSON CIRCUIT COURT, DIVISION 6
CASE NO. 15-CR-0621

COMMONWEALTH OF KENTUCKY

V.

DAISY M. HODGE

PLAINTIFF

DEFENDANT

ORDER DISQUALIFYING JUDGE

This matter is before the Chief Justice upon the certification of the Clerk of the Jefferson Circuit Court of the affidavit and motion of Commonwealth's Attorney Tom Wine to disqualify the Honorable Olu A. Stevens, 30th Judicial Circuit, Division 6, from presiding in the above-styled criminal action.

Upon review of the affidavit and motion, the Chief Justice finds and determines that the Commonwealth's Attorney has demonstrated disqualifying circumstances that require the appointment of a special judge under KRS 26A.020.

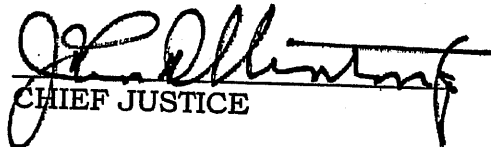
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judge to preside in the above-styled criminal matter until completion; and

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Entered this 17th day of November 2015.


CHIEF JUSTICE

Copies to: A.C. McKay Chauvin, Chief Regional Circuit Judge
Olu A. Stevens, 30th Judicial Circuit, Division 6
Clerk, Jefferson Circuit Court

JEFFERSON CIRCUIT COURT

CIRCUIT CLERKS OFFICE
JEFFERSON CIR COURT

2015 NOV 16 PM 4:03

In re: Jefferson County Indictment 14CR3357, Commonwealth v. Chauncey Sellers
Jefferson County Indictment 15CR0621, Commonwealth v. Daisy M. Hodge

D.C.

AFFIDAVIT OF THOMAS B. WINE, COMMONWEALTH'S ATTORNEY
FOR THE 30TH JUDICIAL CIRCUIT OF KENTUCKY, SEEKING
DESIGNATION OF SPECIAL JUDGE PURSUANT TO KRS 26A.020

STATE OF KENTUCKY
JEFFERSON COUNTY

Comes now Thomas B. Wine, Commonwealth's Attorney, being first duly sworn, under oath, and states as follows.

1. I am Thomas B. Wine, Commonwealth's Attorney for the 30th Judicial Circuit of Kentucky. Prior to being Commonwealth's Attorney, I was a Circuit Court Judge in Jefferson County from 1992 until 2006 and a Court of Appeals Judge from 2006 until 2012. I continue to be and have been a member of the Racial Fairness Commission since its inception in 2000. I am also currently a member of the Jail Policy Review Committee in Jefferson County.
2. In my role as Commonwealth's Attorney, I am the prosecuting attorney for nearly every felony prosecution in Jefferson Circuit Court. To assist me in fulfilling that responsibility, my office employs numerous Assistant Commonwealth's Attorneys who serve as my agents in Jefferson Circuit Court.
3. Jefferson County Indictment Number 14CR3357, Commonwealth v. Chauncey Sellers, is pending in Jefferson Circuit Court Division Six, Judge Olu A. Stevens, presiding. It is assigned to Assistant Commonwealth's Attorneys Alex Gaddis and James Lesousky. It is scheduled for trial on November 17, 2015, at 9:30 a.m.

4. Jefferson County Indictment Number 15CR0621, Commonwealth v. Daisy M. Hodge, is pending in Jefferson Circuit Court Division Six, Judge Olu A. Stevens, presiding. It is assigned to Assistant Commonwealth's Attorney Ebert Haegele. It is scheduled for trial on November 17, 2015, at 9:30 a.m.
5. Because of recent events, it is my belief that Judge Stevens will not afford the people of the Commonwealth a fair and impartial trial (or proceedings) in these cases. Specifically, and as more fully described below, within the last 30 days, Judge Stevens has made a number of comments and accusations in social media,¹ including the following:

- He has opined that there are sinister motives behind my seeking review of his actions.
- He has accused me of seeking to impanel all-white juries.
- He has accused me of opposing diversity on juries.
- He has accused me of calling him a racist.
- He has accused me of stirring up the media against him.
- He has accused me of deceiving the people.
- He has accused me of ignoring national prosecutorial standards in jury selection.
- He has accused me of not serving him with a copy of a motion for certification of the law.
- He has accused my Assistants of being intimidated into acquiescing in my actions.
- He has encouraged citizens to actively oppose me and support of his cause.
- He has expressed his opinions about the merits of the pending Kentucky Supreme Court case, wherein the Kentucky Supreme Court granted certification of law to review his actions during jury selection.
- He has declared that I will live in infamy because of my decision to seek review from a case tried in his Court.

¹ It should be noted that I do not have full access to Judge Stevens' social media accounts, and what is described in this motion may only be a portion of what he has posted on Facebook, Instagram, Snapchat, and other forms of social media.

6. Accordingly and pursuant to KRS 26A.020, I offer this affidavit outlining the reasons for my belief that Judge Stevens will not afford the Commonwealth a fair and impartial trial or pretrial proceedings and requesting that this Court appoint another judge to preside over these two cases, in which the Office of the Commonwealth's Attorney represents the Commonwealth.
7. As a prosecutor and retired judge, I know that "every litigant is entitled to "nothing less than the cold neutrality of an impartial judge" and should be able to feel that his cause has been tried by a judge who is wholly free, disinterested, impartial and independent." *Petzold v. Kessler Homes, Inc.*, 303 S.W.3d 467, 471 (Ky. 2010) quoting *Dotson v. Burchett*, 301 Ky. 28, 34, 190 S.W.2d 697, 700 (1945).
8. In order to fulfill this mandate, I know that the law places certain standards and requirements on judges. For example, "[a] judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice," SCR 4.300, Canon 3(B)(5). This means:

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

SCR 4.300, Canon 3(B)(5), Commentary.

9. I am familiar with the difficulties that judges face, specifically when they have strong personal feelings about issues and parties who appear before them. Nonetheless, as explained by former Justice Frankfurter:

The judicial process demands that a judge move within the framework of relevant legal rules and the covenanted modes of thought for

ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted. But it is also true that reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment, or may not unfairly lead others to believe they are operating, judges recuse themselves. They do not sit in judgment. They do this for a variety of reasons. The guiding consideration is the administration of justice should reasonably appear to be disinterested as well as be so in fact.

Public Utilities Commission of D.C. v. Pollak, 343 U.S. 451, 466-467 (1952)

(Frankfurter, in chambers).

10. As difficult as it might be, I know that the law also restricts the type of public comments judges may make about pending cases. Specifically, the rules instruct: “[a] judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.” SCR 4.300(B)(9). “The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition.” *Id.*, Commentary.
11. Further, I know that KRS 26A.015 requires disqualification of a judge in any proceeding:
 - (a) [W]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings, or has expressed an opinion concerning the merits of the proceeding; [or]

* * * *

(e) Where he has knowledge of any other circumstances in which his impartiality might reasonably be questioned.

12. A similar rule is contained in the Code of Judicial Conduct, which provides: "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." SCR 4.300(E)(1). This includes when "the judge has a personal bias or prejudice concerning a party or a party's lawyer." SCR 4.300(E)(1)(a).
13. I know and understand that under the rules, recusal is mandatory when a judge "determines that 'his impartiality might reasonably be questioned,' *Jacobs v. Com.*, 947 S.W.2d 416, 417 (Ky. App. 1997), and that this mandate should be broadly interpreted, *Poorman v. Com.*, 782 S.W.2d 603, 606 (Ky. 1989).
14. I know that one of the critical purposes in these rules is "to promote public confidence in the integrity of the judicial process." *Liljeberg v. Health Services Acq. Corp.*, 486 U.S. 847, 859-860 (1988). The goal is to "avoid even the appearance of impartiality." *Id.* at 860. The inquiry "'is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances.'" *Dean v. Bondurant*, 193 S.W.3d 744, 746 (Ky. 2006) quoting *Microsoft Corp v. United States*, 530 U.S. 1301 (2000).
15. I am personally aware that "people who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges," and the purpose of requiring recusal under certain circumstances "is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *Liljeberg*, 486 U.S. at 864-865. In one case, for example, recusal was warranted

when a judge was aware that “members of the victim’s family questioned his impartiality.” *Jacobs*, 947 S.W.2d at 417.

16. I, of course, am not a stranger to the bench. Unlike the general public, I recognize the difficult tasks facing Kentucky judges, and I am not quick to “indulge suspicions” and doubts about the integrity of judges. However, given the highly unusual circumstances I describe below, I am convinced that Judge Olu Stevens cannot, whether intentionally or unintentionally, afford “a fair and impartial trial” and pretrial proceedings (KRS 26A.020) to the people of the Commonwealth when represented by me or my Assistant Commonwealth’s Attorneys. Accordingly, I am asking this Court, by the authority of KRS 26A.020, for this Court to assign a special judge to or reassign these two cases.

17. Recent events that I will describe in detail below spur this request, but to fully understand them, I must provide some background. Assistant Commonwealth’s Attorney Alex Gaddis, previously represented the Commonwealth in case number 13CR2070. One of the defendants in that case was James Doss, who was tried in Division Six of the Jefferson Circuit Court in November 2014. The jury acquitted Mr. Doss. Following the acquittal and pursuant to § 115 of the Kentucky Constitution and CR 76.37(10), at my request and through one of my Assistants (who for purposes of the request was appointed as a Special Assistant Attorney General), the Commonwealth sought certification of the law from the Kentucky Supreme Court concerning certain circumstances surrounding the jury selection in Mr. Doss’ case. Specifically, the Commonwealth requested that the Kentucky Supreme Court certify the law concerning the following questions:

- (1) May a trial court dismiss a jury based upon a claim that the fair cross-section requirement has been violated when there has been no evidence of systematic exclusion of a class of persons from jury service? Does it matter if there was only one African American juror on the panel and that juror was struck randomly?
- (2) Does the Commonwealth have a right to proceed with a duly selected jury when a *prima facie* case that the jury violates the fair cross-section requirement has not been made? Is the Commonwealth or a defendant's right contingent upon the racial makeup of the petit jur[y] selected?
- (3) What, if any rights, do citizens who have been duly selected as jurors have to be sworn and hear a case when there is no evidence of systematic exclusion of a class of persons from jury service?
- (4) May a trial court disregard and instruct the parties to disregard prior sworn statements made on the record by prospective jurors during a previous *voir dire* proceeding? Should the trial court consider such statements in evaluating whether the juror should be struck for cause? May the parties rely on such prior statements as grounds for seeking removal for cause or as grounds supporting the exercise of a peremptory challenge?

See Exhibit 1.

18. The Commonwealth's Motion for Certification of the Law was filed with the Kentucky Supreme Court on January 12, 2015. I have been advised by Assistant Commonwealth's Attorney Dorislee Gilbert that on that same day a copy of the Commonwealth's motion was delivered to the Honorable Judge Olu Stevens, Judge for Division Six of the Jefferson Circuit Court, through the Circuit Court Clerk's Office. I have confirmed through the Kentucky Courts Case History for the case that the document was received and entered into the case. See Exhibit 2.
19. On September 24, 2015, the Kentucky Supreme Court granted the Commonwealth's motion requesting review and certification of the law, noting that oral argument would be scheduled by later order. See Exhibit 3.

20. In October 2015, Assistant Commonwealth's Attorney Ebert Haegele, represented the Commonwealth in the felony criminal prosecution of Damon Shanklin, 13CR2929, 15CR1450. Though the case was originally assigned to Division Three of the Jefferson Circuit Court, it was reassigned to Division Six for trial. During Mr. Shanklin's trial, similar issues in jury selection arose as had previously arisen in Mr. Doss' trial almost a year earlier. I have been advised that after the parties engaged in *voir dire*, Judge Stevens expressed his concerns about the racial make-up of the jury to the parties. Judge Stevens then granted a motion to strike the jury panel based on a claim that it was not representative of the community. He released that particular jury panel and recommenced *voir dire* with a new panel of jurors. A jury was seated, trial commenced, and Mr. Shanklin was convicted. His sentencing is scheduled for December 3, 2015.
21. Following Mr. Shanklin's trial, local court news reporter, Jason Riley, wrote an article for WDRB.com concerning the jury selection in both cases and the Commonwealth's motion for certification of the law. See Exhibit 4.
22. I learned in the days following publication of that news story that Judge Stevens took to social media and specifically commented on the pending certification of law proceeding. He explicitly and implicitly called into question and denigrated me and my office for pursuing the Commonwealth's constitutional right to seek certification of the law (see Ky. Const. § 115; CR 76.37(10)). My office is seeking to clarify the law on behalf of jurors who participate in *voir dire* and are tentatively selected for jury service but then dismissed despite any showing that they cannot be fair or that there was systematic exclusion of minority jurors (see *Georgia v. McCollum*, 505

U.S. 42, 48 (1992) (“As the representative of all its citizens, the State is the logical and proper party to assert the invasion of the constitutional rights of the excluded jurors in a criminal trial.”). Importantly, Judge Stevens has mischaracterized the issues about which I have sought certification of law. He has also attempted to stir public opinion and ignite public action in an effort to intimidate me into withdrawing my request for certification of the law and/or to bait me into some sort of social media debate. Judge Stevens’ public comments are inflammatory and call into question his ability to fairly adjudicate cases in which the Office of the Commonwealth’s Attorney is involved. I also have grave concerns about how Judge Stevens’ comments might be unjustly biasing potential jurors against the Office of the Commonwealth’s Attorney.

23. For example, I have received the attached Exhibit 5, which shows that on October 27, 2015, Judge Stevens posted a quote from the National Prosecution Standards of the National District Attorneys Association, and accused me of not complying with the standards: “When the Jefferson Commonwealth’s Attorney opines that I did not make inquiry of the jurors as to their impartiality before their dismissal, he ignores the first part of the equation: A jury should be REPRESENTATIVE of the community.” See Exhibit 5.
24. I have also received the attached Exhibit 6, which shows that on or about October 29, 2015, Judge Stevens posted to Facebook, “Going to the Kentucky Supreme Court to protect the right to impanel all-white juries is not where we need to be in 2015. Do not sit silently. Stand up. Speak up.” See Exhibit. In a series of related comments and a written exchange between another individual on Facebook, Judge Stevens

explained that by this post he was explaining “what Tom Wine is trying to do.” See Exhibit 7, P. 2. In the same series, Judge Stevens wrote, “Wine has called me a racist. And set the media on me to deceive the people while he does his deeds. If people, particularly affected people, would stand up and call him out, he would go right back in the corner.” See Exhibit 7, P. 3. In response to Judge Stevens’ comments about me, the other individual expressed, “i did not know about wine so i was not totally informed”. See Exhibit 7, P. 3. Judge Stevens subsequently wrote: “those seeking to divide our community will do so- under the cover of darkness. It is time to turn on the lights. If you believe you have a right to seat all-white jury panels in Louisville, Kentucky in 2015, tell the people. Wine shouldn’t deceive the people by focusing on me and calling me a racist.” See Exhibit 7, P. 4.

25. I subsequently learned that a letter purportedly authored by Judge Stevens was posted on Facebook by Dr. Boyce Watkins, identified as “The People’s Scholar.” The letter encouraged its recipient “and others” if they were “so inclined” to

please contact Mr. Wine and ask him why he is against racially diverse juries in Louisville, Kentucky. Ask him why he is going to the Kentucky Supreme Court to protect his right to seat all-white juries in 2015 in Louisville, Kentucky. Ask him who are the people he purports to represent when he seeks approval to seat all-white jury panels in a city with a black population of 20%.

See Exhibit 8, P. 2. In additional posts, purportedly written by Judge Stevens, the writer expressed he “did not receive a copy of” Commonwealth’s Attorney Wine’s “motion with the Kentucky Supreme Court to determine [Judge Stevens] was incorrect in dismissing an all-white jury panel.” See Exhibit 8, P.3.

26. Even more recently, I received the attached Exhibit 8, showing that on the morning of November 3, 2015, Judge Stevens posted:

When the prosecution loses a trial and goes complaining to the Kentucky Supreme Court about their entitlement to the all-white jury panel the trial judge set aside, their purpose is readily apparent. And it is wrong. And it is unbecoming of our community. Do not believe those who would have you think this is about excluding anybody. It is not. It is about including everybody. If you have ever used Facebook to say "vote for me", but remain publicly silent or indifferent on this issue that threatens the inclusion of black people and other minorities on our jury panels, shame on you. Stand up for something other than yourself. Speak the truth.

See Exhibit 9.

27. Judge Stevens' comments did not stop there. In the day or two after that comment, Judge Stevens commented again on my actions and provided his opinion about the merits of the pending Kentucky Supreme Court case. This time, he also included comment about the Jefferson County Assistant Commonwealth's Attorneys in my employ.

I know a lot of good prosecutors. They are also good people. I know they do not agree with what Wine is doing. But they are likely not in the position to tell him so. Complaining he should have had an all-white jury panel after losing a trial is poor form at the very least. At most, it is something much more sinister. And if he is successful, it will be a very sad day for the criminal justice system in Kentucky.

See Exhibit 10.

28. On or about November 8, 2015, I learned that Judge Stevens made an additional post to Facebook. This time, he directly addressed the pending certification of the law case pending in the Kentucky Supreme Court and commented specifically about his actions in the underlying case; expressed his opinions about a local attorney and Attorney General Jack Conway; disparaged other judges; again painted my request for certification of the law in a way intentionally designed to incite public outrage.

He wrote:

Last week I received an email from an active member of the local civil bar. He said he had been following the matter and he "supported" what I was doing. But I detected otherwise. The many who prefer to offer private support usually do so via inbox message on social media, not by letter or private email. He ended by reference to an audio clip and the statement, "I assume you're arguing for an extension of the law." His statement, at the very least, demonstrates a fundamental misunderstanding of the procedural posture of this matter. I am the trial judge. I gave the law of the case. I'm not arguing anything. The Commonwealth's Attorney is. Through our Kentucky Attorney General (although surely our Attorney General, who only days ago was seeking the votes of people who will be excluded from jury panels, does not support the Commonwealth's Attorney effort). His pleading seeks "certification of law. He supported it by stating there is no law on point and that the trial courts need "direction" on the issue. To be clear, the case is over. Forever. The defendant was acquitted by a jury of eight white people and four black people. Even the Kentucky Supreme Court is powerless to change the result. So what is the problem here? There is a bigger issue you say? You fear judges sustaining motions to set aside all-white jury panels on a widespread basis? Look around you. There is little risk the others will grant motions to set aside jury panels, no matter what the Supreme Court decides. The truth is the Jefferson Commonwealth's attorney does not have to pursue his right to impanel all-white juries. He is doing so because he wants to. He is doing so because he is seeking to influence a change in my approach and decisions. And if that were the only objective, I would not say a word because he has undertaken an impossible task. But that is not the only objective. Proper application of Batson requires judicial intervention and exercise of discretion. But before we reach the protections of Batson, we must seat a jury panel that is representative of our community. Please hear me: We never reach the issue of protecting black people from discrimination if black people do not exist. The Jefferson Commonwealth's Attorney now seeks to eliminate judicial intervention and exercise of discretion to set aside an all-white jury panel and randomly select another. The Rev. Dr. Martin Luther King, Jr. once said, "There comes a time when silence is betrayal." I will continue to publicly speak to this. I will hold the line. If you believe in justice, you must hold the line too. Don't believe what the opposition says. This is not about excluding anyone. It is about including everyone.

See Exhibit 11.

29. Then Judge Stevens posted again on Facebook. Like many of his posts before, he unjustly posited that in seeking certification of law, my intentions must be contrary to

concepts of justice, equality, and diversity on juries. He expressly quoted from the Commonwealth's request for certification of law; and purporting to direct his remarks to me, he publicly offered his opinion as to the merits of a portion of the issues raised.

He wrote:

The first words of the Jefferson Commonwealth's Attorney's motion for certification of law, via the Kentucky Attorney General, read as follows: "May a trial court dismiss a jury based upon a claim that the fair cross section requirement has been violated when there has been no evidence of systematic exclusion of class of persons from jury service? DOES IT MATTER if there was ONLY ONE AFRICAN AMERICAN JUROR on the panel and that juror was struck randomly?" [Emphasis added].

My answer to the second question is yes. If you believe in the concepts of justice, equality and inclusion for ALL people, it absolutely matters Mr. Prosecutor.

See Exhibit 12. Since Judge Stevens ruled in open court in accord with this expressed opinion, his purpose by this post surely was not to express to me his opinion but to continue to influence public opinion about me and my office. The Supreme Court has accepted the matter for review. It is not appropriate for him to discuss on Facebook issues pending before the Kentucky Supreme Court.

30. On November 10, 2015, Judge Stevens posted again and thanked others in joining in "the cause and against the Jefferson Commonwealth's Attorney's action before the Kentucky Supreme Court." See Exhibit 13. Perhaps in an effort to intimidate me, he wrote: "Tonight there are indications that national legal entities will join the fight." Exhibit 13. In this post, he continued to imply discriminatory motives behind the request for certification of the law when he wrote: "There is very little question about your intent when a black defendant is acquitted by a jury of eight whites and four blacks and you complain about the trial judge granting a defense motion to dismiss an

all-white jury panel.” Exhibit 13. His next words—“And still you are silent? Luckily it is not too late for you to speak.”—improperly encourage social media debate and action about an issue that has yet to be finally determined by the Kentucky Supreme Court. Exhibit 13.

31. To be sure, my decision to seek certification of law is not motivated by any desire to seat all-white juries or to exclude African Americans or other minorities from jury service. In Mr. Doss’s case, the Commonwealth did not strike any African American juror. The Court, by random selection, struck the lone African American juror. Then, Judge Stevens dismissed the entire panel of properly qualified jurors because of that random strike. My decision to seek certification of law is motivated by a desire for the law to be clear to judges, prosecutors, defense attorneys, defendants, victims, witnesses, and potential jurors and for there to be uniformity amongst the courts. Importantly, the questions certified include not only whether striking a jury panel that includes only white jurors, by no action of the prosecution or defense, is correct, but also-if such a dismissal is correct, how additional jury selection should proceed. That Judge Stevens has presumed and proceeded to tell the world through social media that my actions were dictated by discriminatory attitudes, not only offends me, but leads me to reasonably conclude that Judge Stevens cannot be fair and impartial on cases in which I or my assistants are involved.

32. In fact, in one of his recent posts, Judge Stevens invited people to “work against those seeking to ensure the right to impanel all-white juries.” See Exhibit 14, P. 1. Though that is certainly not what I am doing, that is precisely how Judge Stevens has described by request for certification of law in prior Facebook posts. See *e.g.*, Exhibit

11. In this particular post, Judge Stevens charged that I am doing of doing the “exact opposite” of offering support for “diverse juries.” Exhibit 14, P. 1, 2. He criticized “those who merely profess their ‘support’ for diversity” for their “silence on the key issue” and accused them of doing “just as much a disservice to the cause” as me. Exhibit 14, P. 2. This indictment of my character is uncalled for as I have not remained silent on the issue of diversity in our juries. In fact, I am pursuing clarification of the law from the Kentucky Supreme Court about the very issue that has now twice arisen in Judge Stevens’ courtroom and fueled his “cause” on Facebook. The perceived silence is my failure to engage in the social media debate fueled by Judge Stevens and related to—but deliberately misconstruing the issues raised in—an active case pending in the Kentucky Supreme Court.

33. More recently, Judge Stevens posted to Facebook:

History will unfavorably judge a prosecutor who loses a jury trial in which a black man is acquitted and then appeals the matter claiming his entitlement to an all white jury panel. No matter the outcome, he will live in infamy.

Exhibit 15.

34. He has attempted to shame the public into opposing my actions in seeking certification of law. For example, he wrote: “When a black man is acquitted and then the prosecutor asserts his right to an all white jury panel, those who remain silent have chosen comfort over principle.” Exhibit 16.

35. Just this morning, Judge Stevens posted the following on Facebook (see Exhibit 17):



Olu Stevens

48 mins

Debunking the myths that divide us.

1. Certification of law means I violated the law. Not true. It means the Supreme Court believes the matter involves an aspect of the law that is unsettled. In the words of the Commonwealth's Attorney, "there is no law on point."
2. I acted over the objection of the defendant and the prosecutor. False. The motion was made by the Louisville Metro Public Defender on behalf of the defendant. I granted the defendant's motion to dismiss the panel for the reasons he cited. The jury panel was 40 whites and 1 black.
3. I allowed jurors of the first panel to participate in the second panel. Not true. The second group was a different group than the first panel. No juror in the first panel served on the second panel.
4. I determined the white jurors in the first panel could not be fair and impartial because they were white. False. I granted the defense motion to dismiss the entire panel. I did not make a determination that those jurors could not be fair



Write a comment...





4. I determined the white jurors in the first panel could not be fair and impartial because they were white. False. I granted the defense motion to dismiss the entire panel. I did not make a determination that those jurors could not be fair and impartial. If those jurors could not be fair and impartial, they would have disqualified for cause. The panel was dismissed because it was not properly constituted. It represented a substantial departure from the racial make-up of the average jury panel.

5. I am a racist. Not true. I am not a racist. Granting a defense motion to dismiss a jury panel of 40 whites and 1 black does not make me a racist. And calling people on racist language doesn't make me a racist either.

6. I received a copy of the motion the Commonwealth filed in January. Not true. I did not receive a copy. I did not learn of it until a couple of weeks ago while watching the evening news. I immediately requested a copy and began to speak against the Jefferson Commonwealth's Attorney going to the Supreme Court claiming his right to an all-white jury panel after he lost the trial.

7. Why didn't the Public Defender respond? He



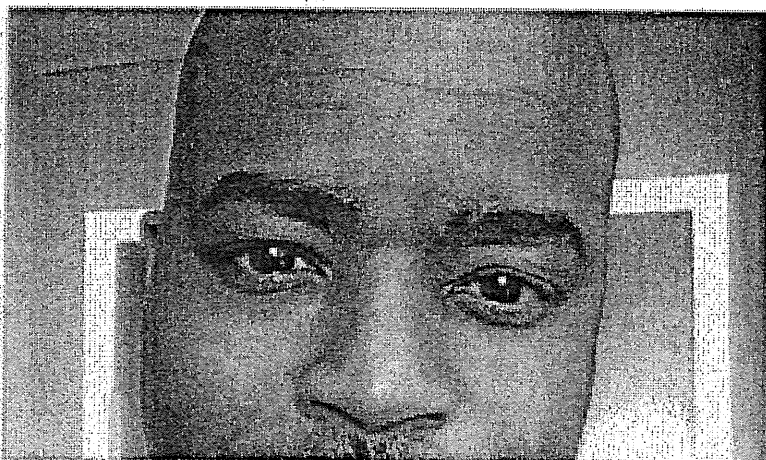
Write a comment...





7. Why didn't the Public Defender respond? He did. He just never notified me. You will have to ask him why he remains silent when he is the one who asked me to set aside the jury panel and so many of his clients will be affected by an adverse decision. We have obtained a copy of his response. It is little wonder the motion for certification was granted. The response did not address the issues presented.

8. This subject matter is the same as the one currently before the U.S. Supreme Court. Not true. But the case before the U.S. Supreme Court does not matter if the Jefferson Commonwealth's Attorney gets what he wants. The truth is all-white juries present few Batson issues. If you are against racial discrimination, you must first be against racial exclusion. That is battleground here.



Write a comment...



Then, he added (see Exhibit 18):



8:47 AM



Posts



Thank you for reading.

1 hour ago · Like · Reply



Olu Stevens

Replied · 2 Replies



Olu Stevens

Another myth is that I will just be speaking publicly and will not respond. False. I am preparing a sternly worded response for the Supreme Court's consideration.

1 hour ago · Edited · Like · 1 · Reply



Janice Reed

How can we put some fire under the public defender?

#NOONEEXCLUDEDEVERYONEINCLUDE D.

1 hour ago · Like · Reply



Olu Stevens

I will be posing some questions to him as to why he said the things he said in his response. And why he is quiet when his lawyers routinely ask for the relief I granted him in this case.

44 minutes ago · Like · 2 · Reply



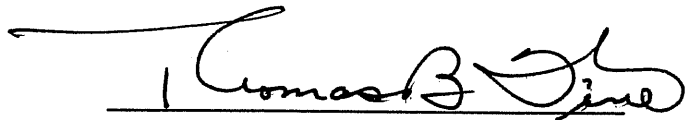
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36. I believe not only that when considered from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances (*Dean*, 193 S.W.3d at 746), Judge Stevens' impartiality in cases in which my office represents the Commonwealth might reasonably be questioned. Additionally, I believe, whether intentionally or not, Judge Stevens—because of his passionate and public outcry against my exercise of the constitutional right of the Commonwealth to seek certification of the law and review of his actions in this case—cannot give the people of the Commonwealth fair and impartial treatment in cases where they are represented by me and my Assistants.

37. I believe that the only adequate remedy is for this Court to reassign or appoint a special judge to hear these cases.

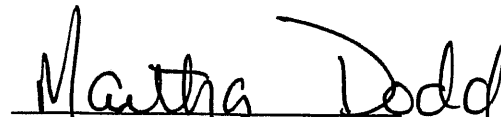
Under penalty of perjury, I swear or affirm that the above statements are true and correct to the best of my information, knowledge and belief.



THOMAS B. WINE
Commonwealth's Attorney
30th Judicial Circuit of Kentucky

November 14, 2015
Date

Subscribed and sworn to me on November 16, 2015.


Notary Public

My commission expires on 2.22.2018.

COMMONWEALTH OF KENTUCKY
SUPREME COURT
2014-SC-_____

COMMONWEALTH OF KENTUCKY

MOVANT

VS.

DIVISION 6, JEFFERSON CIRCUIT COURT
INDICTMENT NO. 13CR2070-003
JUDGE OLU A. STEVENS

JAMES DOSS

RESPONDENT

MOTION FOR CERTIFICATION OF THE LAW

Comes the Commonwealth, by counsel, Attorney General Jack Conway and Special Assistant Attorney General, Dorislee Gilbert, and pursuant to § 115 of the Kentucky Constitution and CR 76.37(10), respectfully moves this Court to certify the law concerning the following:

QUESTIONS

- (1) May a trial court dismiss a jury based upon a claim that the fair cross-section requirement has been violated when there has been no evidence of systematic exclusion of a class of persons from jury service? Does it matter if there was only one African American juror on the panel and that juror was struck randomly?
- (2) Does the Commonwealth have a right to proceed with a duly selected jury when a *prima facie* case that the jury violates the fair cross-section requirement has not been made? Is the Commonwealth or a defendant's right contingent upon the racial makeup of the petit juror selected?

- (3) What, if any rights, do citizens who have been duly selected as jurors have to be sworn and hear a case when there is no evidence of systematic exclusion of a class of persons from jury service?
- (4) May a trial court disregard and instruct the parties to disregard prior sworn statements made on the record by prospective jurors during a previous *voir dire* proceeding? Should the trial court consider such statements in evaluating whether the juror should be struck for cause? May the parties rely on such prior statements as grounds for seeking removal for cause or as grounds supporting the exercise of a peremptory challenge?

TIMELINESS OF CERTIFICATION REQUEST

This motion is timely brought, pursuant to CR 76.37(10), after the final order of acquittal in Jefferson County case number 13CR2070-003, which was entered on December 11, 2014. A copy of that order is attached hereto as Exhibit 1.

PARTIES AND COUNSEL

Movant, the Commonwealth of Kentucky, is represented by Jack Conway, Attorney General, and Dorislee Gilbert, Special Assistant Attorney General, 514 W. Liberty St., Louisville, KY 40202.

Respondent, James Doss, is represented by Sean Pharr, Office of the Louisville Metro Public Defender, 200 Advocacy Plaza, 717-719 W. Jefferson St., Louisville, KY 40202.

FACTS

Respondent, an African American male, and two co-defendants were indicted for theft by unlawful taking over \$500 but less than \$10,000 and for falsely reporting an

incident. One co-defendant pled guilty, and the case against the other was dismissed without prejudice. Respondent's case was scheduled for trial on November 18, 2014. On that date, the parties appeared and announced ready for trial. VR 11/28/2014, 10:15:33.¹ The Commonwealth dismissed the false reporting charge. VR 11/18/2014, 10:58:57. The trial court entertained several pretrial motions, and a panel of prospective jurors was brought into the courtroom so that jury selection could begin. VR 11/18/2014, 10:15:45 and following.

Respondent objected and requested that the jury panel be dismissed. VR 11/18/2014, 11:04:28. He complained that the panel, which consisted of 41 persons and included only one African American male, did not represent a fair cross-section of the community in violation of his equal protection and due process rights to be judged by a fair cross-section of the community. VR 11/18/2014, 11:04:28 and following. The Commonwealth objected to the motion to dismiss the panel, explaining that the entire jury pool summoned for jury service in Jefferson County represented a fair cross-section of the community and that this particular panel had been selected at random. VR 11/18/2014, 11:05:07. At that time, the trial court said it would hold the motion in abeyance in order to avoid additional delay for the prospective jurors. VR 11/18/2014, 11:05:21. The trial court expressed surprise, indicating that this was the first time it ever had a panel with that composition. VR 11/18/2014, 11:05:44.

Voir dire commenced. VR 11/18/2014, 11:26:02. At its conclusion, the trial court addressed Respondent's motion to dismiss the jury panel. VR 11/18/2014, 01:23:34 and following. The trial court observed that the panel was not as representative of the community as panels normally are and that it had never had a panel with only one

¹ A copy of the recorded proceedings referenced herein is attached as Exhibit 2.

African American juror. VR 11/18/2014, 01:23:34. The trial court was troubled by this occurrence, but found that the panel had been compiled using a random process that was no different than the process normally undertaken to assign a panel of jurors to a courtroom even though the particular panel was not as representative of the racial diversity of the community as panels usually are. VR 11/18/2014, 01:24:09. The trial court specifically inquired of Respondent whether he had any indication that the process was anything other than random. VR 11/18/2014, 01:24:51.

Respondent cited *Castaneda v. Partida*, 430 U.S. 482 (1977), in support of his claim and argued that the burden of proof had shifted to the Commonwealth to show that a fair process had been employed. VR 11/18/2014, 01:24:54 and following.

Respondent's counsel indicated that he had conducted a casual search of some unidentified census and it showed that Louisville's African American population was close to one quarter, about 23%. VR 11/18/2014, 01:26:30. Thus, he argued having one African American juror on a panel of 41 potential jurors established substantial underrepresentation. VR 11/18/2014, 01:26:35.

The trial court again remarked that the situation was "very unusual," and turned to the Commonwealth for a response. VR 11/18/2014, 01:27:28. The Commonwealth answered that, although the makeup of the specific panel before it was unusual, there was no indication that the process by which the particular panel was selected from the larger pool was not random and pursuant to the ordinary practices for assignment of a panel of jurors from the larger pool of available jurors. VR 11/18/2014, 01:27:37 and following.

The trial court reaffirmed that it was finding that there was no indication that the process used to select and assign the particular panel before it was no different than used

when other panels are randomly selected from the larger jury pool. VR 11/18/2014, 01:28:41. While recognizing that the composition of the panel was odd and that the panel was not as diverse as other panels, the trial court found that fact alone did not mean the jury panel did not represent a fair cross-section of the community. VR 11/18/2014, 01:28:41. The trial court found that the panel represented a fair cross-section, and denied Respondent's motion. VR 11/18/2014, 01:29:16.

The parties moved that certain jurors be struck for cause and exercised their peremptory strikes. VR 11/18/2014, 01:29:31 and following. Because of overlapping strikes, four jurors were required to be struck at random to finally select the petit jury. VR 11/18/2014, 02:48:51. The court clerk removed four jurors at random. VR 11/18/2014, 02:49:24. One of those jurors was the sole African American man on the panel. VR 11/18/2014, 02:50:45.

Respondent renewed his motion to strike the jury incorporating all arguments he made previously. VR 11/18/2014, 02:50:45. The trial court expressed that although it was really troubled by what had occurred, the juror had been struck randomly; the trial court overruled the renewed request. VR 11/18/2014, 02:51:48.

Respondent again objected, expressing that even though the process was random, relief was still warranted. VR 11/18/2014, 02:52:50. Respondent argued that intentional conduct to prevent the jury from being a fair cross-section of the community was not required for relief because the defendant had a fundamental right to be judged by members of his community. VR 11/18/2014, 02:53:20. Respondent complained because there were no African American jurors but only Caucasian jurors. VR 11/18/2014, 02:53:50. He expressed that he believed the jury make-up was prejudicial to him because

it was unfair for him to have only white people on his jury when racial biases are obvious in society. VR 11/18/2014, 02:54:02. He claimed that he had shown substantial underrepresentation of a class on the jury and the burden shifted to the Commonwealth to put on affirmative evidence. VR 11/18/2014, 02:54:35.

The Commonwealth responded that Respondent had received due process, and that although the result was odd in this particular case, there was no basis for thinking what occurred was the result of anything but randomness. VR 11/18/2014, 02:55:45. The Commonwealth contended that to set aside the jury and to require what Respondent was seeking would require an undoing of the whole jury selection procedure. VR 11/18/2014, 02:56:08. Additionally, the Commonwealth disagreed that there was no diversity amongst the remaining jurors, noting that there was at least one juror who appeared to speak English as a second language and may have been of Latin American descent. VR 11/18/2014, 02:56:25.

The trial court expressed that the issue was difficult because of the underlying assumption that people of races think alike or are fairer to someone of their own race, but pointed out that was not the issue in this case, rather the issue was Respondent's right to have a jury that was representative of the community, which the court believed had been violated because no African American juror remained on the petit jury. VR 11/18/2014, 02:56:46. The trial court disagreed with the statistics previously offered by Respondent and expressed its belief that African Americans made up 18-20% of Jefferson County's population. VR 11/18/2014, 02:57:41. The trial court again expressed that it had never seen anything like this. VR 11/18/2014, 02:57:41. The trial court described that its concern was not intent, but rather the result—namely, that Respondent did not have a jury

representative of the community because there was not one single African American person on the jury. VR 11/18/2014, 02:57:56. Because Respondent was an African American man, the trial court was concerned about the lack of any African American juror. VR 11/18/2014, 02:58:04. The trial court granted the motion, and set aside the jury entirely, explaining that the panel would be dismissed, that a new panel would be requested for the next morning, and that jury selection would begin anew. VR 11/18/2014, 02:58:27.

The Commonwealth made a motion to continue the trial until the current pool of jurors was released and a new pool was available because of concern over some of the same individuals who had sat through jury selection being part of the second panel that would undergo jury selection the following day. VR 11/18/2014, 03:00:21. The trial court denied the motion. VR 11/18/2014, 03:00:21.

The following day a new panel of jurors was made available. VR 11/19/2014, 09:34:33 and following. The Commonwealth voiced concern about jurors who had taken part in jury selection the previous day and what effect their statements in the prior *voir dire* had on the current proceedings. VR 11/19/2014, 09:50:26. The trial court opined that the jury selection the day before "didn't happen" and that the parties should "erase" what happened in the preceding day's *voir dire* from their minds. VR 11/19/2014, 09:51:25 and following. The trial court instructed that the parties would not be able to incorporate any questions from the day before (VR 11/19/2014, 09:51:56), that they should not make any motions based on anything the jurors said the previous day (VR 11/19/2014, 09:46:46), that they could not impeach jurors with their statements from the day before (VR 11/19/2014, 09:53:02), and that they should not use anything a juror said

the day before as a basis for striking a juror (VR 11/19/2014, 09:53:57). The trial court refused to incorporate the *voir dire* from the day before into the trial record and referred to the day the second panel was brought forward as the first day of trial on the record. VR 11/19/2014, 09:34:33, 09:53:15.

The new panel of 41 included 4 African American jurors. VR 11/19/2014, 01:39:20. Respondent renewed his motion to strike the jury panel because of his claim that it did not represent a fair cross-section of the community. VR 11/19/2014, 09:55:16. Respondent expressly stated that he was not blaming the Commonwealth or even necessarily calling into question the procedure. VR 11/19/2014, 09:58:40. The trial court denied the motion pointing out that the panel was more diverse than the panel the day before, though not as diverse as usual. VR 11/19/2014, 09:59:14. The trial court noted that it was not unusual to have only one of 14 jurors on a petit jury be African American in Jefferson County and offered this as the reason it did not grant Respondent's motion to strike the jury panel on the previous day until the lone African American juror was removed from the panel randomly. VR 11/19/2014, 09:59:36.

The Court found that the second jury panel was sufficiently constituted. VR 11/19/2014, 09:59:47. A petit jury was seated. VR 11/19/2014, 02:08:00. It included all four African American jurors on the panel. VR 11/19/2014, 01:43:08. The trial commenced. VR 11/19/2014, 02:12:04. Respondent was ultimately found not guilty. VR 11/20/2014, 06:07:00; Exhibit 1. An order to that effect was entered on December 11, 2014. See Exhibit 1. The Commonwealth seeks certification of the law from that final order of acquittal.

REASONS CERTIFICATION SHOULD BE GRANTED

Kentucky law is clear that a trial court does not commit reversible error when it fails to dismiss a jury due to an alleged violation of the constitutional requirement that a jury be selected from a fair cross-section of the community if the defendant has not made a *prima facie* case by showing “(1) that the group alleged to be excluded is a ‘distinctive’ group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.” *Johnson v. Commonwealth*, 292 S.W.3d 889, 894 (Ky. 2009) quoting *Duren v. Missouri*, 439 U.S. 357, 364 (1979). Less clear is whether absent this *prima facie* showing and over the objection of the Commonwealth, the trial court has authority to dismiss a jury based on a claim that the fair cross-section requirement has been violated. In the absence of evidence of a systematic exclusion of a group of eligible citizens or discriminatory action on the part of the Commonwealth, the prosecution and the Court of Justice have a vested interest in the trial proceeding with the selected jury. Doing so preserves the defendant’s constitutional rights (since there has been no evidence that the fair cross-section requirement was violated), spurs judicial economy, and imbues jurors and potential jurors who participated in the original jury selection with confidence that the system of jury selection is designed in a way that provides all parties with equal opportunity to participate in the selection of a fair jury. Moreover, allowing the trial to proceed preserves the rights of the constitutionally

selected jurors to participate in the criminal justice system by serving on a jury.² It prevents them from being excluded from jury service because they were not of a certain race. Nonetheless, there does not appear to be any case law regarding the rights of the Commonwealth and potential jurors when a defendant does not meet his burden of proof when alleging a fair cross-section violation.

The Court has repeatedly affirmed that a defendant's constitutional right to select a jury from a fair cross-section of the community is not violated when he is unable to show that the representation of a distinctive group of people in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community and that the underrepresentation is due to systematic exclusion of the group in the jury-selection process. *Johnson*, 292 S.W.3d at 894. In *Johnson*, for example, the Court affirmed the trial court's rejection of the defendant's claim that his jury was not comprised of a fair cross-section of the community because the defendant failed to provide statistics comparing the percentage of the allegedly underrepresented group with the percentage of the group in the county's jury pools over a period of time. *Id.* at 895. More than two decades earlier, in *Commonwealth v. McFerron*, 680 S.W.2d 924 (Ky. 1984), the Court affirmed the trial court's denial of the defendant's motion to set aside the jury panel because of a claim of systematic exclusion of doctors and lawyers from jury pools because the defendant failed to establish a *prima facie* case of systematic exclusion. See also, *Mash v. Commonwealth*, 376 S.W.3d 548 (Ky. 2012) (affirming denial of the defendant's motion to set aside the jury panel because he failed to establish a *prima facie* case that the fair cross-section requirement was violated); *Rodgers v.*

² See e.g., *Powers v. Ohio*, 499 U.S. 400 (1992), for general discussion regarding the rights of citizens to serve on a jury.

Commonwealth, 285 S.W.3d 740, 759 (Ky. 2009) (affirming denial of the defendant's claim that the fair cross-section requirement was violated because the defendant "made no attempt to show that [African Americans] are regularly underrepresented on Jefferson County venires or that the jury selection process systematically excludes them").

In each of these cases, the trial court denied the motion to excuse the jury, the appellate court affirmed, and there was no discussion of the rights or interests of the Commonwealth to proceed to trial with the selected jury in the absence of evidence that the jury selection process was unconstitutional. Nor was there any discussion in any of these cases of the rights of the potential jurors to participate in the criminal justice system through jury service. By certifying the law, this Court could clarify the law on these issues. This Court could provide guidance to trial courts about the limits of their authority and the full panoply of concerns that must be considered when there is an invitation to strike a jury panel on the basis of underrepresentation of a group but no evidence of systematic exclusion of the group.

When the trial court first denied the motion to dismiss the panel in this case, it expressed being troubled by the composition of the panel before it. The trial court later recognized difficulty in its decision and the existence of an underlying assumption that people of the same race think alike or are fairer to someone of their own race. Undoubtedly, other trial judges may feel societal, political, and other pressures about the appearance of racial fairness on specific panels, especially when a defendant of a specific race argues that the absence of persons of that race on the jury is unfair and results in bias. A certification of the law from this Court could settle what role such concerns may play in the determination of whether a defendant's rights regarding jury selection are

violated in a particular case. Certification would also make clear how the rights of the Commonwealth and prospective jurors play into the equation.

In this case, there was no evidence regarding the racial makeup of the entire pool of potential jurors or of any past pool or panel of potential jurors. The trial court and both parties agreed that it was unusual to see only one African American person on a jury panel in Jefferson County. There was no evidence that this rare occurrence was due to any systematic exclusion of African Americans from jury service.

The trial court twice denied the motion to dismiss the panel, finding that the fair cross-section requirement had been met. However, when the lone African American juror was struck at random, the trial court reversed course, and granted the motion to strike the panel. The fact that no African American juror was seated due to random selection changed the trial court's determination that the fair cross-section requirement had not been violated.³ There was no evidence that the particular jurors selected to hear the trial could not be fair and impartial. Nonetheless, those jurors were stricken because of the perception that without a juror of the same race as Respondent, the jury could not be fair.

The Commonwealth and Respondent had the opportunity to make and object to motions to strike for cause. They also exercised peremptory challenges as they deemed appropriate. The Commonwealth selected what it believed would be a fair and impartial jury. In the absence of *prima facie* evidence of a fair cross-section violation, the trial court struck the jury based on nothing more than an unsupported fear or impression that

³ The next day the trial court explained that the random striking of the one African American juror on the panel made a difference because it was not unusual to see a petit jury in Jefferson County with only one African American juror on it. So, in the trial court's view, until that particular juror was randomly struck, the panel was constitutional.

the jury might not be fair because of its racial makeup. There was no consideration of whether the Commonwealth or the citizens who had sacrificed of their own lives to make themselves available for jury service had any rights or interests in continuing to trial with the jury as selected. This Court should certify the law and give guidance to trial courts, prosecutors, and defense attorneys. Answers might also preserve Court of Justice and citizen resources by identifying whether there is any problem in the manner in which the jury panel was assigned from the larger pool in this case and in other cases.

Finally, this case also presents the opportunity for this Court to articulate the law regarding the use of potential jurors' prior statements in other *voir dire* proceedings. As described above, in this case the trial court advised the parties that when they began *voir dire* the second time, the court was operating as if the *voir dire* the day before had never occurred. The trial court specifically instructed the parties not to reference statements made by jurors on the previous day, even if the same jurors appeared on the new panel and gave contradictory answers. This unwillingness to entertain questions or motions based upon the prospective jurors' sworn statements from the prior day's proceedings, especially where the parties were the same, unfairly limited the parties' efforts to obtain a fair jury. The trial court has great discretion in the manner in which it conducts *voir dire* largely due to its unique position to judge the demeanor of the jurors (see *e.g.*, *Sherroan v. Commonwealth*, 142 S.W.3d 7, 15 (Ky. 2004), and where, as here, the trial court observed prospective jurors' demeanor on two occasions, completely disregarding one of those occurrences should not be an option. However, Kentucky case law does not clearly provide instruction to trial courts as to what they should do in this instance or in the similar instance where although in different trials, the same prospective jurors appear

before the court, giving answers during *voir dire* on more than one occasion. If this Court certifies the law on this issue, trial courts and the parties will have better direction in the conduct of *voir dire* which will result in fairer juries.

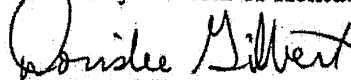
CONCLUSION

WHEREFORE, for all the reasons stated above, the Commonwealth specifically requests that this Court certify the law regarding (1) a trial court's authority to dismiss a jury based upon a claim that the fair cross-section requirement has been violated in the absence of evidence of systematic exclusion of a group from jury service; (2) the rights of the Commonwealth to proceed with a jury or jury panel when claims of a violation of the fair cross-section requirement are not adequately supported; (3) the rights of potential jurors to serve on a jury where they have been duly selected and there is no evidence of systematic exclusion of any group of jurors; and (4) the permissible uses for prospective jurors' prior sworn statements in an earlier *voir dire* proceeding.

Respectfully submitted,

JACK CONWAY

Attorney General of Kentucky



DORISLEE GILBERT

Special Assistant Attorney General

514 W. Liberty St.

Louisville, KY 40202

(502) 595-2300

NOTICE

Notice is hereby given that the foregoing Motion for Certification of Law was filed with the Clerk of the Supreme Court by express mail on this 12th day of January 2015, to be considered at the Court's earliest convenience.

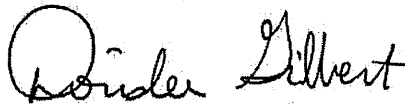


DORISLEE GILBERT

Special Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Motion for Certification of Law was delivered to the Hon. Olu A. Stevens, Judge, Jefferson Circuit, Division 6, Louisville, KY 40202; Hon. Sean Pharr, Counsel for Respondent, Office of the Louisville Metro Public Defender, Advocacy Plaza, 717-719 W. Jefferson St., Louisville, KY 40202.



DORISLEE GILBERT

Special Assistant Attorney General

NO. 13CR2070-3

JEFFERSON CIRCUIT COURT
DIVISION SIX (6)
JUDGE OLU A. STEVENS

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

TRIAL VERDICT AND JUDGMENT

JAMES DOSS

DEFENDANT

REPRESENTING THE COMMONWEALTH: Honorable Alex Gaddis
REPRESENTING THE DEFENDANT: Honorable Sean Pharr

At a Court hearing held on *November 19, 2014*, came the Defendant and counsel, the Defendant standing on his plea of not guilty, heretofore entered herein. The Court being advised by both sides who agree that they are prepared to proceed with this cause to the determination of a jury, **IT IS ORDERED** by the Court that such proceedings begin. Therefore, to try the issues, comes a jury of peers duly selected and sworn according to law.

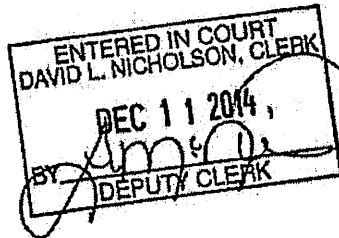
All of the evidence having been heard, instruction of the Court given and summation of counsel heard, the Jury retired and, after having deliberated the issues, returned into open Court and reported the following verdict, to-wit:

VERDICT UNDER INSTRUCTION NO. 1

THEFT BY UNLAWFUL TAKING OVER \$500

We, the Jury, find the defendant, James Doss, not guilty under Instruction No. 1.

IT IS FURTHER ORDERED by this order that the charge of Theft by Unlawful Taking
Over \$500 is dismissed.




O. A. STEVENS, JUDGE
JEFFERSON CIRCUIT COURT

DATE

12/4/14

cc: Alex Gaddis
Assistant Commonwealth's Attorney

Sean Pharr
Counsel for Defendant

Case History
COMMONWEALTH VS. DOSS, JAMES R
Case# 13-CR-002070-003

Generated: 11/02/2015 3:48:47PM

County JEFFERSON
Court CIRCUIT Court
Opening Judge HON. OLU A. STEVENS
Current Judge
Closing Judge HON. OLU A. STEVENS

			Page #
	Scheduled Event		
	MOTION NOT REQUIRING HEARING		
	HON. OLU A. STEVENS		
07/31/2013	Charge Filed	0232905 COMPLICITY *OBS* THEFT BY UNLAWFUL TAKING/DISP-ALL OTHERS Citation: NA Citation Date: 08/01/24/17/14: FTV	
	CHARGE 1 ORIGINAL 4/17/14: FTV		
07/31/2013	Charge Filed	0026405 COMPLICITY FALSELY REPORTING AN INCIDENT Citation: NA Citation Date: 08/01/2013	
	CHARGE 2 ORIGINAL 4/17/14: FTV		
07/31/2013	Document Filed		
	INDICTMENT		
08/01/2013	Case Filed		
	CIRCUIT CRIMINAL		
08/05/2013	Scheduled Event	Aug 5 2013 at 11:00 AM	
	ARRAIGNMENT		
	HON. OLU A. STEVENS		
08/05/2013	Document Filed		
	ORDER OF ARRAIGNMENT - NOT GUILTY PLEA JUD PC: 9/19/13 @ 9 AM BD: ROR ATTY: C. KLEIN		
08/05/2013	NOE to All Counsel of Record and Parties Not Represented by Counsel.		
	ORDER OF ARRAIGNMENT - NOT GUILTY PLEA FIRST CLASS MAIL PC: 9/19/13 @ 9 AM BD: ROR ATTY: C. KLEIN		
09/18/2013	Document Filed		
	RESPONSE CA TO COURT'S ORDER FOR DISCOVERY		
10/17/2013	Document Filed		
	RESPONSE CA TO THE COURT'S PRETRIAL ORDER OF DISCOVERY		
11/19/2013	Document Filed		
	RESPONSE CA TO THE COURT'S PRETRIAL ORDER OF DISCOVERY		
12/03/2013	Document Filed		
	COMMITTMENT 1/14/14 @ 9:15 AM NOT HELD ON THE SE CHARGES		



COMMONWEALTH VS. DOSS, JAMES R

Case# 13-CR-002070-003

County JEFFERSON
Court CIRCUIT Court
Opening Judge HON. OLU A. STEVENS
Current Judge
Closing Judge HON. OLU A. STEVENS

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12/03/2013	Motion Disposed MOTION TO WITHDRAW ATTORNEY-PRIVATE ATTY CHRIS KLEIN ORD TEND	0 Days	
12/03/2013	Motion Filed MOTION TO WITHDRAW ATTORNEY-PRIVATE ATTY CHRIS KLEIN ORD TEND		
12/03/2013	Document Filed ORDER ALLOWING ATTORNEY TO WITHDRAW JUD CHRIS KLEIN		
12/03/2013	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER ALLOWING ATTORNEY TO WITHDRAW FIRST CLASS MAIL CHRIS KLEIN		
12/03/2013	Motion Filed MOTION TO INCREASE BOND COMMONWEALTH'S ATTORNEY ORD TEND		
01/14/2014	Document Filed COMMITTMENT 2/17/14 @ 9:15 AM NOT HELD ON THE SE CHARGES		
01/15/2014	Document Filed ORDER OF CONTINUANCE JUD PC: 2/17/14 @ 9:15 AM		
01/15/2014	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER OF CONTINUANCE FIRST CLASS MAIL PC: 2/17/14 @ 9:15 AM		
02/17/2014	Document Filed COMMITTMENT 3/19/14 @ 9:15 AM NOT HELD ON THE SE CHARGES		
02/17/2014	Document Filed WAIVER OF DUAL OR MULTIPLE REPRESENTATION D		
03/19/2014	Document Filed COMMITTMENT 4/17/14 @ 9:30 AM NOT HELD ON THE SE CHARGES		



COMMONWEALTH VS. DOSS, JAMES R

Case# 13-CR-002070-003

County JEFFERSON

Court CIRCUIT Court

Opening Judge HON. OLU A. STEVENS

Current Judge

Closing Judge HON. OLU A. STEVENS

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04/17/2014	Scheduled Event PRETRIAL CONFERENCE HON. OLU A. STEVENS <i>R/A FR 9/19/13; R/A FR 10/22/13; R/A FR 12/3/13; R/A FR 1/14/14; R/A FR 2/17/14; R/A FR 3/19/14</i>	Apr 17 2014 at 09:30 AM	
04/17/2014	Document Filed ORDER FOR BENCH WARRANT JUD <i>FAILURE TO APPEAR AT COURT BD: \$1 5,000 FC CC: DIV 6 JUDGE STEVENS</i>		
04/17/2014	Bail Set CASH <i>FAILURE TO APPEAR AT COURT BD: \$1 5,000 FC CC: DIV 6 JUDGE STEVENS</i>	\$ 15,000.00	
04/17/2014	Warrant Issued BENCH WARRANT <i>FAILURE TO APPEAR AT COURT BD: \$1 5,000 FC CC: DIV 6 JUDGE STEVENS</i>	@00000052698	
04/18/2014	Document Filed ORDER RECALLING BENCH WARRANT JUD		
04/18/2014	Document Filed ORDER SETTING TRIAL / HEARING JUD <i>PC: 5/23/14 @ 9:30 AM</i>		
04/18/2014	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER SETTING TRIAL / HEARING FIRST CLASS MAIL <i>PC: 5/23/14 @ 9:30 AM</i>		
05/30/2014	Motion Filed MOTION FOR RETURN OF PROPERTY OTHER PARTY <i>/ORD TND/</i>		
06/09/2014	Scheduled Event MOTION HOUR HON. OLU A. STEVENS	Jun 9 2014 at 11:00 AM	
06/25/2014	Motion Filed MOTION FOR SEPARATION ATTORNEY-PUBLIC ADVOCATE <i>..., TRIAL OR ALTERNATIVELY TO EXC LUDE STATEMENTS OF CO-DEFT /ORD TN D/</i>		
06/27/2014	Scheduled Event PRETRIAL CONFERENCE HON. OLU A. STEVENS	Jun 27 2014 at 09:45 AM	
09/16/2014	Motion Filed MOTION TO COMPEL ATTORNEY-PUBLIC ADVOCATE <i>..., EXCULPATORY EVIDENCE, ORD., T ND.</i>		

CIRCUIT Court

13-CR-002070-003



Page 3 of 5

COMMONWEALTH VS. DOSS, JAMES R

Case# 13-CR-002070-003

County JEFFERSON
 Court CIRCUIT Court
 Opening Judge HON. OLU A. STEVENS
 Current Judge
 Closing Judge HON. OLU A. STEVENS

Page #

10/20/2014	Document Filed RESPONSE CA <i>TO DEFENDANT'S MOTION TO COMPEL EX CULPATORY EVIDENCE</i>	
10/27/2014	Document Filed ORDER DENYING JUD <i>DEF'S MOT TO COMPEL PC: 11/12/14 @ 9:45 AM</i>	
10/27/2014	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER DENYING FIRST CLASS MAIL <i>DEF'S MOT TO COMPEL PC: 11/12/14 @ 9:45 AM</i>	
11/12/2014	Scheduled Event OTHER HEARING HON. OLU A. STEVENS <i>R/A FR 9/17/14; R/A FR 10/22/14</i>	Nov 12 2014 at 09:45 AM
11/18/2014	Scheduled Event JURY TRIAL HON. OLU A. STEVENS	Nov 18 2014 at 09:30 AM
11/19/2014	Document Filed JURY LIST CA	
11/19/2014	Document Filed JURY LIST APA	
11/19/2014	Document Filed JURY LIST	
11/20/2014	Document Filed JURY INSTRUCTIONS CA	
11/20/2014	Document Filed JURY INSTRUCTIONS APA	
12/11/2014	Case Disposed	497 Days
12/11/2014	Charge Disposed CHARGE 1 ORIGINAL DISMISSED <i>4/17/14: FTV</i>	0232905 COMPLICITY *OBS* THEFT BY UNLAWFUL TAKING/DISP-ALL OTHERS
12/11/2014	Charge Disposed CHARGE 2 ORIGINAL DISMISSAL BY MOTION OF PROSECUTOR <i>4/17/14: FTV</i>	0026405 COMPLICITY FALSELY REPORTING AN INCIDENT
12/11/2014	Document Filed EXECUTION CA	



COMMONWEALTH VS. DOSS, JAMES R

Case# 13-CR-002070-003

County JEFFERSON

Court CIRCUIT Court

Opening Judge HON. OLU A. STEVENS

Current Judge

Closing Judge HON. OLU A. STEVENS

Page #

12/11/2014	Document Filed EXECUTION APA	
12/11/2014	Document Filed JURY INSTRUCTIONS JUD	
12/11/2014	Document Filed ORDER DISMISSING JUD <i>FALSELY REPORTING AN INCIDENT</i>	
12/11/2014	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER DISMISSING FIRST CLASS MAIL <i>FALSELY REPORTING AN INCIDENT</i>	
12/11/2014	Document Filed JURY VERDICT JUD <i>TBUT U/ \$500 - DISMISSED</i>	
12/11/2014	NOE to All Counsel of Record and Parties Not Represented by Counsel. JURY VERDICT FIRST CLASS MAIL <i>TBUT U/ \$500 - DISMISSED</i>	
01/12/2015	Motion Filed MOTION - OTHER COMMONWEALTH'S ATTORNEY <i>FOR CERTIFICATION OF THE LAW NO O RD TEND</i> <i>COPY OF MOT TENDERED</i>	
09/24/2015	Document Filed ORDER GRANTING JUD <i>SUPREME COURT ORDER GRANTING CERTI FICATION OF LAW AND SET FOR ORAL A RGUMENTS</i>	
09/24/2015	NOE to All Counsel of Record and Parties Not Represented by Counsel. ORDER GRANTING FIRST CLASS MAIL <i>SUPREME COURT ORDER GRANTING CERTI FICATION OF LAW AND SET FOR ORAL A RGUMENTS</i>	
10/23/2015	Document Filed NOTICE OF CERTIFICATION OF RECORD ON APPEAL <i>COPIES MAILED TO COMMONWEALTH ATTO RNEY, COURT OF APPEALS, ATTORNEY G ENERAL, CICELY LAMBERT-PD</i>	
10/23/2015	NOE to All Counsel of Record and Parties Not Represented by Counsel. NOTICE OF CERTIFICATION OF RECORD ON APPEAL FIRST CLASS MAIL <i>COPIES MAILED TO COMMONWEALTH ATTO RNEY, COURT OF APPEALS, ATTORNEY G ENERAL, CICELY LAMBERT-PD</i>	



Supreme Court of Kentucky

2015-SC-000018-CL

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SCANNED

SEP 25 2015

COMMONWEALTH OF KENTUCKY

OFFICE OF
COMMONWEALTH'S ATTORNEY
APPELLANT

V.

REQUEST FOR CERTIFICATION OF THE LAW
BY COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT NO. 13-CR-2070-003

JAMES DOSS

APPELLEE

ORDER GRANTING CERTIFICATION OF LAW AND SET FOR ORAL ARGUMENT

The Commonwealth's motion requesting review and certification of the law in the above-styled action is GRANTED.

The case shall proceed in the same manner as other appeals. The parties shall comply with the briefing schedule as specified in CR 76.12. Oral argument will be scheduled by later Order.

Minton, C.J.; Abramson, Barber, Cunningham, Noble, and Venters, JJ., concur. Keller, J., dissents.

ENTERED: September 24, 2015.


CHIEF JUSTICE

EXHIBIT 3



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68

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Louisville judge questioned for dismissing juries based on lack of minorities

Posted: Oct 20, 2015 3:23 PM EDT
Updated: Oct 27, 2015 11:02 AM EDT

By Jason Riley **CONNECT**

LOUISVILLE, Ky. (WDRB) — Unhappy with the number of potential black jurors called to his court last week, Jefferson Circuit Court Judge Olu Stevens halted a drug trial and dismissed the entire jury panel, asking for a new group to be sent up.

"The concern is that the panel is not representative of the community," said Stevens, who brought in a new group of jurors despite objections from both the defense and prosecutor.

And this wasn't the first time Stevens, who is black, has dismissed a jury because he felt it was lacking enough minorities. Now the state Supreme Court is going to determine whether the judge is abusing his power.

On Nov. 18, after a 13-member jury chosen for a theft trial ended up with no black jurors, Stevens found it "troublesome" and dismissed the panel at the request of a defense attorney.

"There is not a single African-American on this jury and (the defendant) is an African-American man," Stevens said, according to a video of the trial. "I cannot in good conscience go forward with this jury."

A new jury panel was called up the next day.

After that, the Jefferson County Commonwealth's Attorney's Office and Attorney General asked the Kentucky Supreme Court to look at the issue and see if Stevens has the authority to dismiss jury panels because of a lack of minorities. And last month, the high court agreed to hear arguments.

Jefferson County has long had a problem with minorities being underrepresented on local juries. Several black defendants have complained over the years that they were convicted by an all-white jury - not of their peers.

The Racial Fairness commission - a group made up of local judges, lawyers and citizens - has studied the issue for years, monitored the make-up of jury panels and found them consistently lacking in minorities.

For example, in October, 14 percent of potential jurors were black, far below the estimated 21 percent for all residents of Jefferson County, according to records kept by the commission. In September, 13 percent of potential Jefferson County jurors were black.

"It's a problem," said Appeals Court Judge Denise Clayton, head of the commission. "We are not hitting that representation."

But should judges take it upon themselves to try and ensure a more representative jury?

Stevens said through a secretary at his office that he has no comment.

Commonwealth's Attorney Tom Wine declined to comment. But in the November case, prosecutors argued the jury panel was chosen at random, as is typically done.

And prosecutors said dismissing a jury after they had learned about the case and sending them back to be with the original pool could taint jurors.

But Stevens said both sides should "erase" what happened with jury selection from their minds and pretend it didn't happen. In fact, the judge forbade each side from making any motions based on anything the previous jurors had said and referred to the questioning of the second batch of jurors as the first day of trial, according to court documents.

In requesting the Supreme Court hear the issue, Assistant Commonwealth's Attorney Dorislee Gilbert argued that other judges "may feel societal, political, and other pressures" to dismiss a jury for lack of minorities if allowed.

EXHIBIT 4

And Gilbert said that there was no proof the jury in the November case could not be fair and impartial just because of their race.

The judge "struck the jury based on nothing more than unsupported fear or impression that the jury might not be fair because of its racial makeup," Gilbert wrote in the case, commonwealth vs. James Doss. "There was no consideration of whether the commonwealth or the citizens who had sacrificed of their own lives to make themselves available for jury service had any rights or interests in continuing to trial with the jury as selected."

In the recent case, on the second day of the drug trial on Oct. 14, Stevens said he was concerned that the panel of jurors attorneys were to choose a jury from included 37 white people and only three black citizens. And two of the three potential black jurors had already been eliminated.

The defense attorney, Johnny Porter, suggested ensuring that the lone remaining black member of the panel makes the final jury.

Stevens told both sides about the Nov. 18 trial, how the second panel of jurors he called up included four black citizens and was more representative.

"We've already done this one time," Stevens said. "So right off the bat, you've got a blueprint and we can be a lot more efficient, in theory."

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Olu Stevens

Oct 27 at 10:53pm • Edited • 

The National Prosecution Standards of the National District Attorneys Association state, "The primary purpose of the jury selection process is to empanel a jury that is representative of the community and does not have personal interests or prejudices for or against a party to the extent that they cannot render a verdict based upon the law and the facts." When the Jefferson Commonwealth's Attorney opines that I did not make inquiry of the jurors as to their impartiality before their dismissal, he ignores the first part of the equation: A jury should be REPRESENTATIVE of the community.

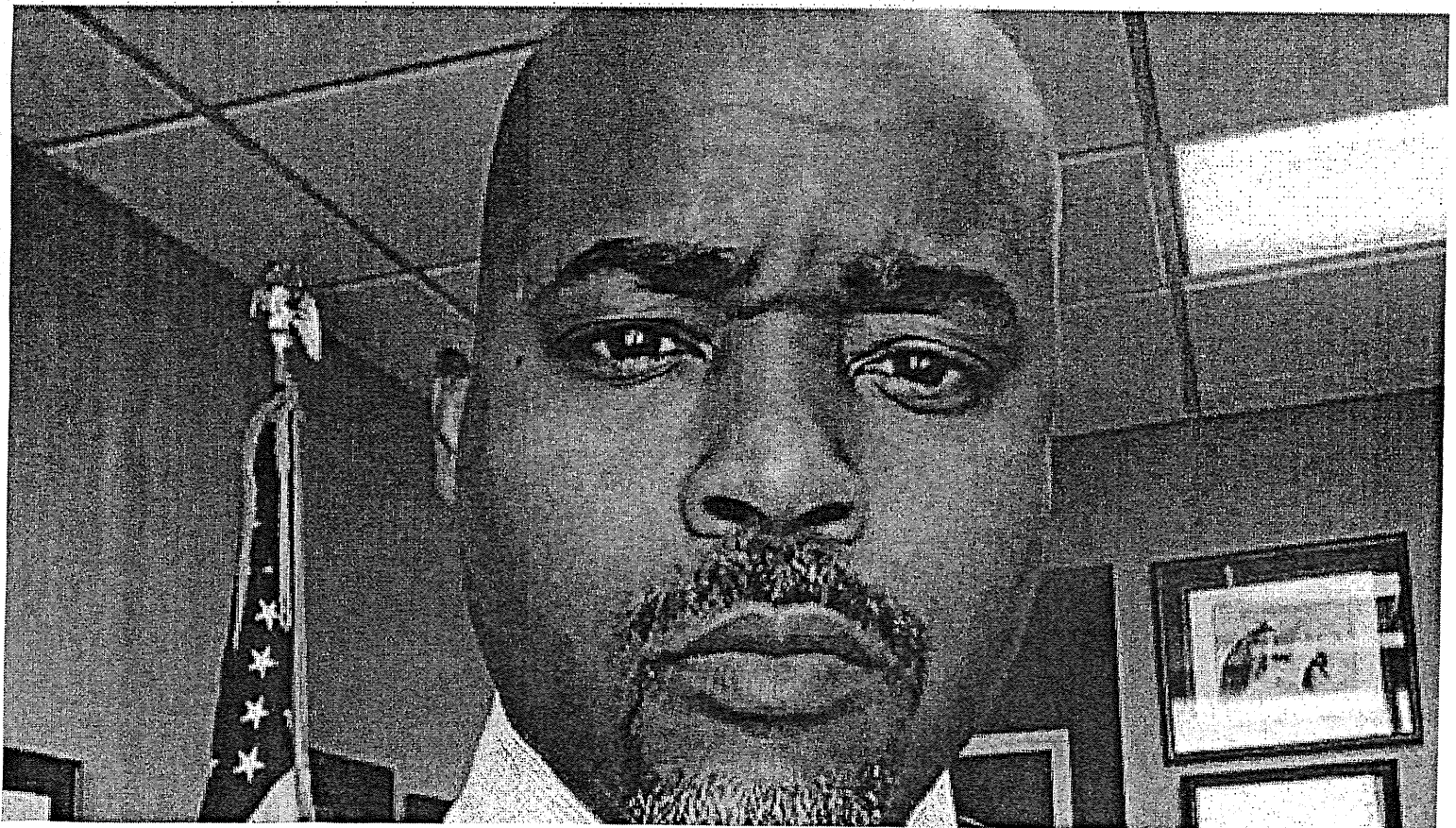
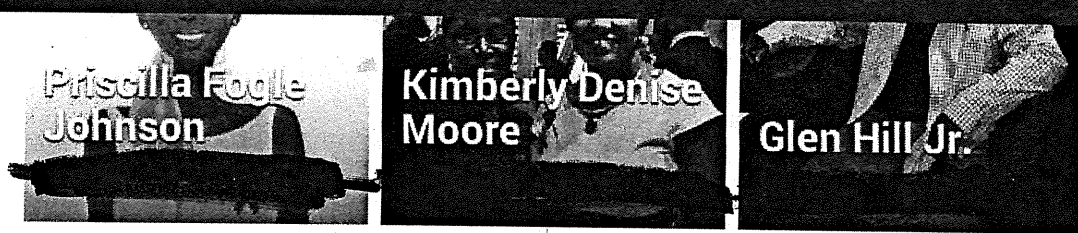


EXHIBIT 5



See All Friends >

Posts



Olu Stevens

41 mins • 👤

Going to the Kentucky Supreme Court to protect the right to impanel all-white juries is not where we need to be in 2015. Do not sit silently. Stand up. Speak up.

17 likes 4 comments



Like



Comment



Share



Justin Freer ▶ **Olu Stevens**

Oct 29 at 12:23pm • 👤

If you dont stand for something youll fall for anything. #admirationfromafar

3 likes 1 comment



Like



Comment



JBluecollarbarber Alexander



Replies



Olu Stevens

Our opinions are not different. I think you are centrally focused on who is most concerned and most affected. Those are the voices you are hearing and that is what no doubt prompted your reference to "African-Americans". From your comment, it is clear you agree that juries should be diverse. I think that in Jefferson that practically means more black people. But whatever you believe the lack of representation is, it is clear that all-white juries are not in the best interests of a community that is 20% black and where the jail population stands at 55% black. Addressing the problem for black people does not mean I am speaking against white people or anyone else. I agree we need more Native Americans and more Hispanic Americans and more Asian Americans on petit juries. But I have presided over a ton of these jury selections. Exclusion of those groups simply isn't the problem that exclusion of black people is. The point is what I have indicated in my post. Period. And that is what Tom Wine is trying to do.

3 hours ago • Like • 2



Write a reply...




EXHIBIT 7



Replies




Olu Stevens

, my post did not mention African Americans. Secondly, you are either unfamiliar with the jury selection process in Jefferson County or simply in denial if you think discrimination against Native American or Hispanic jurors is a rampant problem. It should not happen. And it is not happening. Check the statistics and talk to trial judges who preside over cases. I've presided over nearly 150 jury selections. I have yet to see a juror issue to which you draw attention. It simply does not exist. Check the statistics. I advocate fairness for all people. Period. But respectfully, your comment misses the point and ignores reality.

4 hours ago • Like •  3




I do have knowledge of jury selection after 25 years of working in circuit and family combined obviously I have great respect for the bench but also respect for different opinions and thank you I will check the statistics I respected you as a gal in family court but seem to see a different person now just my very very humble opinion



Write a reply...





Replies



i do not think you are a racist in the least i respect you totally, and yes lights n

3 hours ago • Like •  1



Olu Stevens

I want t be clear. Of course you don't think I'm a racist. Wine has called me a racist. And set the media on me to deceive the people while he does his deeds. If people, particularly affected people, would stand up and call him out, he would go right back in the corner.

3 hours ago • Like •  2



need to be turned on these subjects you now have a very stressful job and are trying to make a change which is always hard i did not know about wine so i was not totally informed have some very serious health issues going on with my son and not totally up to date on news

3 hours ago • Like



you are right keep fighting the fight i always knew you would make a huge impact on the judicial community and yes



Write a reply...





Replies

3 hours ago • Like •  2



[REDACTED]
I totally agree and perhaps did not put it in good context have a wonderful day my friend

3 hours ago • Like •  1



Olu Stevens

You are always my dear friend. We agree on the main point. My hope is that others who believe in diversity will take a stand. The time is now. Those seeking to divide our community will do so- under the cover of darkness. It is time to turn on the lights. If you believe you have a right to seat all-white jury panels in Louisville, Kentucky in 2015, tell the people. Wine shouldn't deceive the people by focusing on me and calling me a racist. People know me. And they aren't falling for that.

3 hours ago • Like •  2



[REDACTED]
i do not think you are a racist in the least i respect you totally, and yes lights n

3 hours

Copied to clipboard.



Olu Stevens



Write a reply...





1:48 PM



Posts



Boyce Watkins

4 hrs • Chicago, Illinois •

One of my students, [REDACTED], emailed Justice Olu Stevens, the black judge in Louisville, KY who dismissed a jury for being too white. She asked how we can help. Here's what he said, please read carefully:

Ms. [REDACTED]:

Again, thank you very much for reaching out to me. I am most appreciative.

You wanted to know how you can help me. I am fighting for diverse juries in our city and in the Commonwealth of Kentucky. Tom Wine, the Jefferson Commonwealth's Attorney and Louisville's top prosecutor is going to the Kentucky Supreme Court to have my ruling overturned and protect his right to seat all-white jury panels in Louisville, Kentucky. Our city boasts a 20% black population. Our jail population in Louisville is 55%. If successful, his actions will have a negative impact on all citizens, particularly our black citizens. Those of the disproportional jail population will suffer the most as their liberty is at risk.



Write a comment...



EXHIBIT 8

← Posts



Our jail population in Louisville is 55%. If successful, his actions will have a negative impact on all citizens, particularly our black citizens. Those of the disproportional jail population will suffer the most as their liberty is at risk.

If you and others are so inclined, please contact Mr. Wine and ask him why he is against racially diverse juries in Louisville, Kentucky. Ask him why he is going to the Kentucky Supreme Court to protect his right to seat all-white juries in 2015 in Louisville, Kentucky. Ask him who are the people he purports to represent when he seeks approval to seat all-white jury panels in a city with a black population of 20%.

Thank you again for your interest and for reaching out to me. And thank you for your support. The stakes are high and I will keep up the fight.

Judge Olu A. Stevens
Jefferson Circuit Court, Division 6
Jefferson County Judicial Center
700 West Jefferson Street
Louisville, Kentucky 40202
(502)595-4311 ph



Like



Comment



Share

224 people like this.



Write a comment...





Boyce Watkins

Justice Stevens just sent us another message, explaining the nature of the case:

Thank you for your interest in this matter. We are trying to bring light to what is happening here in Louisville, Kentucky. The defendant, an African-American man, was acquitted by a jury of his peers. After his acquittal, the Jefferson Commonwealth's Attorney Thomas B. Wine filed a motion with the Kentucky Supreme Court to determine I was incorrect in dismissing an all-white jury panel. I did not receive a copy of his motion. His claim is that I discriminated against the all-white jury panel and jury by declaring them unable to be fair and impartial. That is not true. But the issue is not the ability of white jurors to be fair and impartial. It is the right of black jurors to have that same opportunity.



Write a comment...



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jury panel and jury by declaring them unable to be fair and impartial. That is not true. But the issue is not the ability of white jurors to be fair and impartial. It is the right of black jurors to have that same opportunity.

As I have repeatedly said in response to the publicity generated by this matter, it is not about excluding anybody. It is about including everybody. And we will continue to fight for justice, fairness, equality and inclusion.

Thanks again for your attention to this most pressing matter.

Judge Olu A. Stevens
Jefferson Circuit Court, Division 6
Jefferson County Judicial Center
700 West Jefferson Street
Louisville, Kentucky 40202
(502)595-4311 ph

13 minutes ago · Like · 1 · Reply



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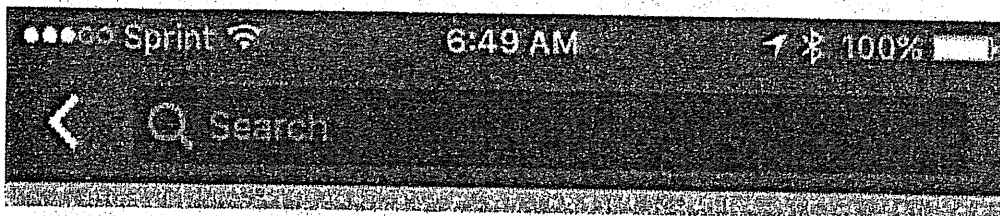


Notifications

1



More



Olu Stevens

14 mins · Edited ·

When the prosecution loses a trial and goes complaining to the Kentucky Supreme Court about their entitlement to the all-white jury panel the trial judge set aside, their purpose is readily apparent. And it is wrong. And it is unbecoming of our community. Do not believe those who would have you think this is about excluding anybody. It is not. It is about including everybody. If you have ever used Facebook to say "vote for me", but remain publicly silent or indifferent on this issue that threatens the inclusion of black people and other minorities on our jury panels, shame on you. Stand up for something other than yourself. Speak the truth.



Like

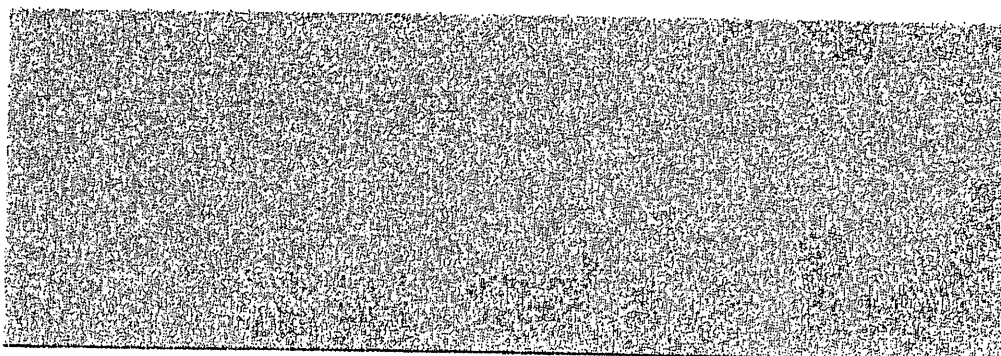


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Jennifer Gregory Lindsey and 11 others like this.



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Olu Stevens

Todd, you know I agree. I know a lot of good prosecutors. They are also good people. I know they do not agree with what Wine is doing. But they are likely not in a position to tell him so. Complaining he should have had an all-white jury panel after losing a trial is poor form at the very least. At most, it is something much more sinister. And if he is successful, it will be a very sad day for the criminal justice system in Kentucky.

Yesterday at 11:37 PM • Like •  1



Olu Stevens

22 mins · Edited · 

Last week I received an email from an active member of the local civil bar. He said he had been following the matter and he "supported" what I was doing. But I detected otherwise. The many who prefer to offer private support usually do so via inbox message on social media, not by letter or private email. He ended by reference to an audio clip and the statement, "I assume you're arguing for an extension of the law." His statement, at the very least, demonstrates a fundamental misunderstanding of the procedural posture of this matter. I am the trial judge. I gave the law of the case. I'm not arguing anything. The Commonwealth's Attorney is. Through our Kentucky Attorney General (although surely our Attorney General, who only days ago was seeking the votes of people who will be excluded from jury panels, does not support

excluded from jury panels, does not support the Commonwealth's Attorney effort). His pleading seeks "certification of law". He supported it by stating there is no law on point and that the trial courts need "direction" on the issue. To be clear, the case is over. Forever. The defendant was acquitted by a jury of eight white people and four black people. Even the Kentucky Supreme Court is powerless to change the result. So what is the problem here? There is a bigger issue you say? You fear judges sustaining motions to set aside all-white jury panels on a widespread basis? Look around you. There is little risk the others will grant motions to set aside jury panels, no matter what the Supreme Court decides. The truth is the Jefferson Commonwealth's attorney does not have to pursue his right to impanel all-white juries. He is doing so because he wants to. He is doing so because he is seeking to influence a change in my approach and decisions. And if that were the only objective, I would not say a word because

ne is seeking to influence a change in my approach and decisions. And if that were the only objective, I would not say a word because he has undertaken an impossible task. But that is not the only objective. Proper application of Batson requires judicial intervention and exercise of discretion. But before we reach the protections of Batson, we must seat a jury panel that is representative of our community. Please hear me: We never reach the issue of protecting black people from discrimination if black people do not exist. The Jefferson Commonwealth's Attorney now seeks to eliminate judicial intervention and exercise of discretion to set aside an all-white jury panel and randomly select another. The Rev. Dr. Martin Luther King, Jr. once said, "There comes a time when silence is betrayal." I will continue to publicly speak to this. I will hold the line. If you believe in justice, you must hold the line too. Don't believe what the opposition says. This is not about excluding anyone. It is about including everyone.



Olu Stevens

5 mins 



The National Prosecution Standards of the National District Attorneys Association state, "The primary purpose of the jury selection process is to empanel a jury that is representative of the community..."

The first words of the Jefferson Commonwealth's Attorney's motion for certification of law, via the Kentucky Attorney General, read as follows: "May a trial court dismiss a jury based upon a claim that the fair cross section requirement has been violated when there has been no evidence of systematic exclusion of class of persons from jury service? DOES IT MATTER if there was ONLY ONE AFRICAN AMERICAN JUROR on the panel and that juror was struck randomly?" [Emphasis added].

My answer to the second question is yes. If you believe in the concepts of justice, equality and inclusion for ALL people, it absolutely matters Mr. Prosecutor.



Olu Stevens

5 mins

We have received a tremendous outpouring of support from all over the country. Thank you to Dr. Boyce Watkins, Ricky Smiley, D.L. Hugely and other national figures who have spoken out in favor of the cause and against the Jefferson Commonwealth's Attorney's action before the Kentucky Supreme Court. Tonight there are indications that national legal entities will join the fight. There is very little question about your intent when a black defendant is acquitted by a jury of eight whites and four blacks and you complain about the trial judge granting a defense motion to dismiss an all-white jury panel. And still you are silent? Luckily it is not too late for you to speak. Don't listen to anybody telling you otherwise. This is not about excluding anyone. It is about including everyone.



All-white juries sending black people to prison: Ending the epidemic

[youtube.com](https://www.youtube.com/watch?v=...)



Like



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EXHIBIT 13



Olu Stevens

9 hrs • Edited • 

Don't be fooled by the cheap-seaters. The question of whether you support diversity on juries and the question of whether or not you stand behind granting a defense motion to set aside a jury panel are two separate things. Such motions are routinely made in Jefferson Circuit Court. Apparently there are a lot of folks asking for things they really don't want or believe in. Saying you support diversity on juries is good. The questions we ought to be asking those of influence are these: Are you willing to take action to ensure diverse jury panels? Are you willing to work against those seeking to ensure the right to impanel all-white juries? Anybody can say they "support" diverse juries. Especially members of the criminal defense bar. They certainly cannot afford to say they are against them. They would be hypocrites...err...they are hypocrites. If asked, even the Jefferson Commonwealth's Attorney may offer his "support" for diverse juries. Would that be good enough? Of course not. His actions say the exact opposite. By their silence on the key issue, those who merely profess their "support" for diversity
EXHIBIT 14
unaccompanied by a demonstrated commitment to

diverse juries. Especially members of the criminal defense bar. They certainly cannot afford to say they are against them. They would be hypocrites...err...they are hypocrites. If asked, even the Jefferson Commonwealth's Attorney may offer his "support" for diverse juries. Would that be good enough? Of course not. His actions say the exact opposite. By their silence on the key issue, those who merely profess their "support" for diversity unaccompanied by a demonstrated commitment to action do just as much a disservice to the cause as the Jefferson Commonwealth's Attorney himself. And yes, I understand this is an expensive post. There are many who just can't afford to like.





Olu Stevens

12 mins 



History will unfavorably judge a prosecutor who loses a jury trial in which a black man is acquitted and then appeals the matter claiming his entitlement to an all white jury panel. No matter the outcome, he will live in infamy.



Like



Comment



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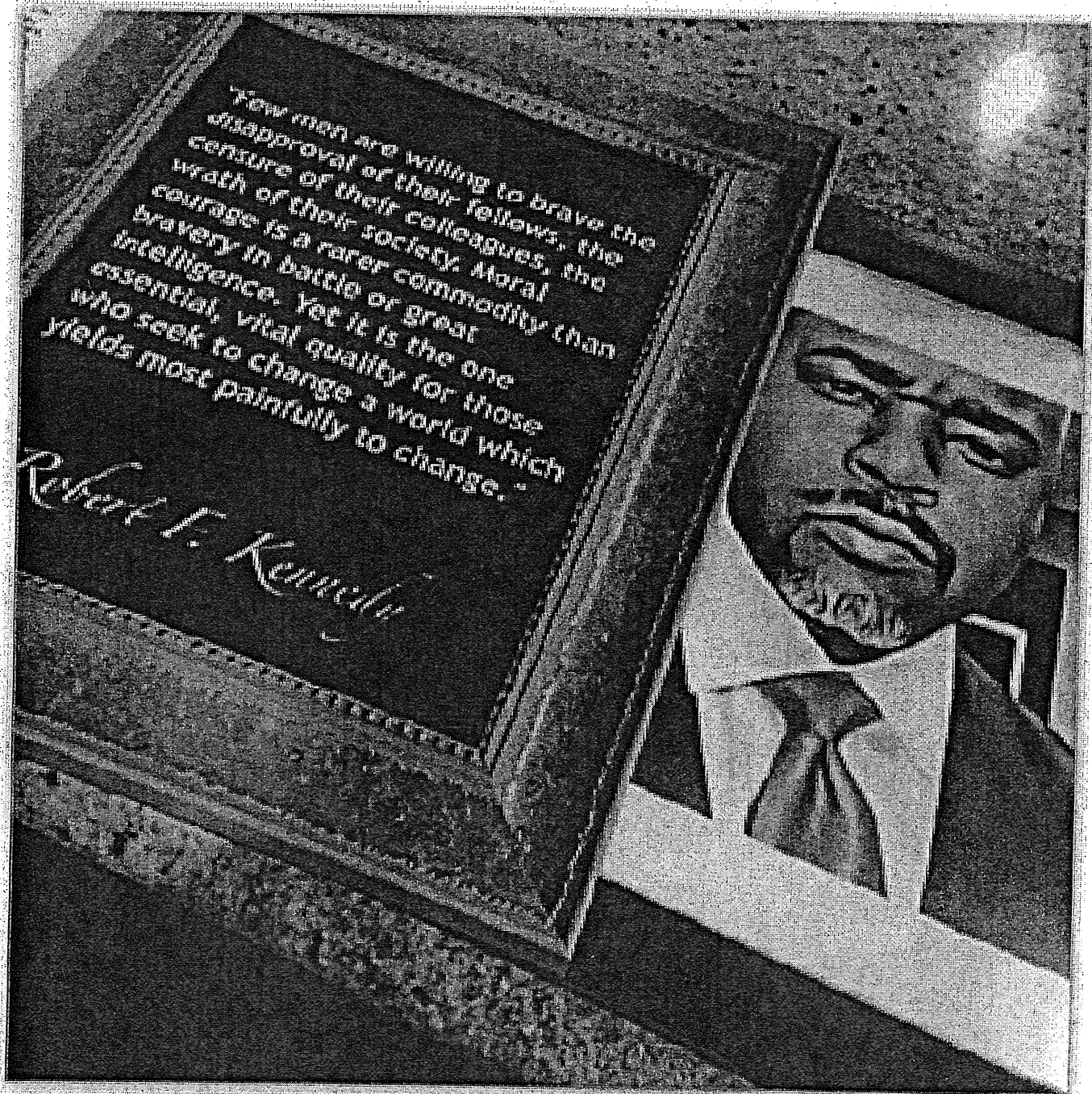
2 people like this.



Olu Stevens

Just now

When a black man is acquitted and then the prosecutor asserts his right to an all white jury panel, those who remain silent have chosen comfort over principle.



Like

Comment

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EXHIBIT 16



Olu Stevens

48 mins 

Debunking the myths that divide us.

- 1. Certification of law means I violated the law. Not true. It means the Supreme Court believes the matter involves an aspect of the law that is unsettled. In the words of the Commonwealth's Attorney, "there is no law on point."**
- 2. I acted over the objection of the defendant and the prosecutor. False. The motion was made by the Louisville Metro Public Defender on behalf of the defendant. I granted the defendant's motion to dismiss the panel for the reasons he cited. The jury panel was 40 whites and 1 black.**
- 3. I allowed jurors of the first panel to participate in the second panel. Not true. The second group was a different group than the first panel. No juror in the first panel served on the second panel.**
- 4. I determined the white jurors in the first panel could not be fair and impartial because they were white. False. I granted the defense motion to**

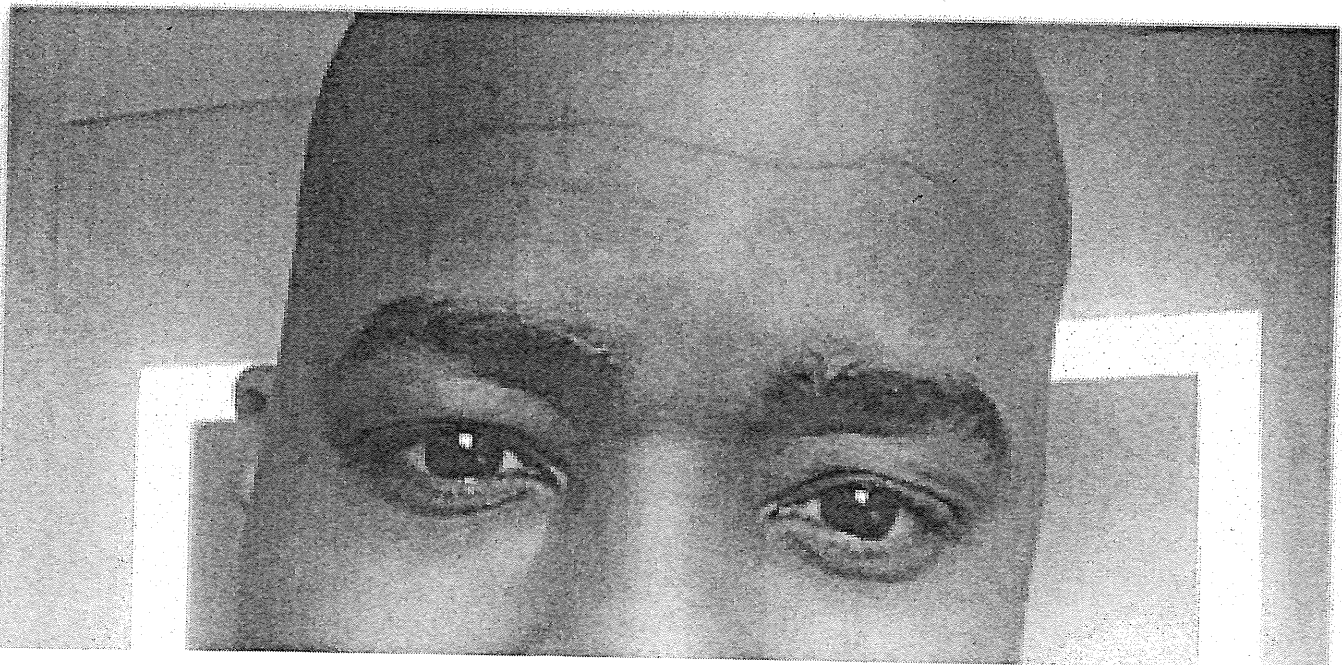
4. I determined the white jurors in the first panel could not be fair and impartial because they were white. False. I granted the defense motion to dismiss the entire panel. I did not make a determination that those jurors could not be fair and impartial. If those jurors could not be fair and impartial, they would have disqualified for cause. The panel was dismissed because it was not properly constituted. It represented a substantial departure from the racial make-up of the average jury panel.

5. I am a racist. Not true. I am not a racist. Granting a defense motion to dismiss a jury panel of 40 whites and 1 black does not make me a racist. And calling people on racist language doesn't make me a racist either.

6. I received a copy of the motion the Commonwealth filed in January. Not true. I did not receive a copy. I did not learn of it until a couple of weeks ago while watching the evening news. I immediately requested a copy and began to speak against the Jefferson Commonwealth's Attorney going to the Supreme Court claiming his right to an all-white jury panel after he lost the trial.

7. Why didn't the Public Defender respond? He did. He just never notified me. You will have to ask him why he remains silent when he is the one who asked me to set aside the jury panel and so many of his clients will be affected by an adverse decision. We have obtained a copy of his response. It is little wonder the motion for certification was granted. The response did not address the issues presented.

8. This subject matter is the same as the one currently before the U.S. Supreme Court. Not true. But the case before the U.S. Supreme Court does not matter if the Jefferson Commonwealth's Attorney gets what he wants. The truth is all-white juries present few Batson issues. If you are against racial discrimination, you must first be against racial exclusion. That is battleground here.





I thank you for reading.

1 hour ago • Like • Reply




Olu Stevens

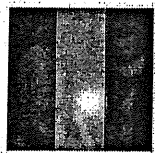
Replied • 2 Replies



Olu Stevens

Another myth is that I will just be speaking publicly and will not respond. False. I am preparing a sternly worded response for the Supreme Court's consideration.

1 hour ago • Edited • Like •  1 • Reply



Janice Reed

How can we put some fire under the public defender?

#NOONEEXCLUDEDEVERYONEINCLUDE D.

1 hour ago • Like • Reply



Olu Stevens

I will be posing some questions to him as to why he said the things he said in his response. And why he is quiet when his lawyers routinely ask for the relief I granted him in this case.

44 minutes ago • Like •  2 • Reply