

S.Ct. 2052, even though such a failure may result in the execution of a client, while raising the issue may result in a new trial or modification of sentence. Smith v. Murray, supra, 477 U.S. at 536, 106 S.Ct. at 2667.

4. Although Defendant's counsel are experienced in death penalty defense, they simply are not able, due to lack of time caused by their heavy caseload, and in the face of a "rush" by the court and the prosecution to keep dockets "clean", to know that issues and claims are "percolating" in the Oklahoma Court of Criminal Appeals, let alone what is "percolating" in the various and numerous federal courts.

5. The Defendant hereby gives notice that if any issue or claim which could or should be raised on his behalf is deemed waived, such waiver is solely the result of his counsels' inability to complete a proper and thorough investigation of his case, research all appropriate issues, and have the resources and time needed to raise all necessary and appropriate issues and claims on his behalf.

6. Hence, Defendant objects to any such waiver, and states that any such waiver is the result of court sanctioned and imposed ineffective assistance of counsel, depriving Defendant his right to effective assistance of counsel, right to confrontation, a reliable sentence, due process and equal protection of the law, and a fundamentally fair trial, all of which are guaranteed Defendant by the United States and Oklahoma Constitutions.

7. This Objection and Waiver is made in good faith, as shown by the other Motions and Objections made or filed by counsel for Defendant in this cause.

Respectfully submitted,

James T. Rowan
James T. Rowan, OBA #7787
Oklahoma Indigent Defense System
Capital Trial Division
P. O. Box 926
Norman, OK 73070-0926
(405) 329-4272
ATTORNEY FOR JOSHUA D. STUMP

VERIFICATION

STATE OF OKLAHOMA)
) ss.
COUNTY OF CLEVELAND)

I, James T. Rowan, after being first duly sworn upon my oath, state that the information contained in the above and foregoing Objection to Standards of Counsel Imposed by United States Supreme Court and Notice of Non-waiver of Issues and Objections is true and correct to the best of my knowledge and belief.

James T. Rowan
James T. Rowan

SUBSCRIBED and SWORN to before me this 11th day of January 1996.

Brenda J. Shults
NOTARY PUBLIC

My Commission Expires:

3-8-99

(SEAL)

CERTIFICATE OF SERVICE

This is to certify that on this 11th day of January, 1996, a true and correct copy of the above and foregoing instrument was mailed, postage pre-paid, to the office of Miles C. Zimmerman, Lincoln County District Attorney, P.O. Box 126, Chandler, Oklahoma 74834, and to the office of Barney K. Barnett, Lincoln County Assistant District Attorney, P.O. Box 126, Chandler, Oklahoma 74834.

James T. Rowan
James T. Rowan

IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
Plaintiff,)
)
-vs-)
)
JOSHUA D. STUMP,)
)
Defendant.)

Case No. CF-95-104

FILED
JAN 12 1996
Linda Siler, Ct. Clk, Lincoln Co. Okla.
By: [Signature] Deputy

**DEFENDANT'S OBJECTION TO STANDARD JURY INSTRUCTIONS
RE: EVALUATION OF MITIGATING EVIDENCE**

The Defendant, Joshua D. Stump, objects to the standard, pattern uniform jury instructions given with respect to the manner in which the jury should evaluate mitigating evidence. As grounds for this motion, Defendant shows as follows:

1) In mandatory terms, the uniform jury instructions routinely given in capital cases instruct the jury that it must consider the aggravating circumstances, and only consider the death penalty if the aggravating circumstances are proven beyond a reasonable doubt, and cannot impose the death penalty unless it is found that the aggravating circumstances outweigh mitigating circumstances.

2) The uniform jury instructions regarding mitigating evidence states as follows:

Mitigating circumstances are those which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability or blame. The determination of what are mitigating circumstances is for you as jurors to resolve under the facts and circumstances of this case. (OUJI-CR 438).

Generally, the jury is also given an instruction listing mitigating factors shown by the evidence. (OUJI-CR 434). Usually, this instruction implies that the jury has the discretion to decide if the mitigating circumstances presented in evidence by the accused apply to the facts of the case.

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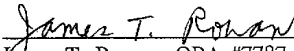
3) These uniform, pattern instructions violate the Eighth and Fourteenth Amendments because a sentencer cannot refuse, or be invited to refuse, consideration of relevant mitigating circumstances. The permissive language of the uniform jury instructions regarding mitigating allows the jury the option of ignoring mitigating circumstances altogether. All this is in violation of the Eighth and Fourteenth Amendments.

WHEREFORE, Defendant ask that this objection be sustained.

Authority:

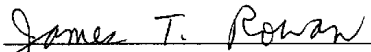
Hitchcock v. Dugger, 481 U.S. 393, 107 S.Ct. 1821 (1987);
Skipper v. South Carolina, 476 U.S. 1, 106 S.Ct. 1669 (1986);
U.S. Const. Amends. VIII, XIV.

Respectfully submitted,


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ATTORNEY FOR JOSHUA D. STUMP

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James T. Rowan

MICROFILM ROLL # 411 PAGE# 1776

IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 -vs-)
)
 JOSHUA D. STUMP,)
)
 Defendant.)

Case No. CF-95-104

FILED
 JAN 12 1996
 Linda Siler, C. Clk. Lincoln Co. Okla.
 Deputy

**DEFENDANT'S OBJECTION TO UNIFORM JURY INSTRUCTIONS
 RE: FINDING OF UNANIMITY
 WITH RESPECT TO MITIGATING CIRCUMSTANCES**

The Defendant, Joshua D. Stump, objects to the pattern, uniform jury instructions given in capital cases to the extent that they imply a jury must find a mitigating circumstance of circumstances unanimously before these factors can be considered by the jury in determining punishment. As grounds for this motion, Defendant shows the following:

1) The general, uniform jury instructions given in death penalty cases with respect to aggravating circumstances make repeated references to the need for unanimity. By law, a jury cannot find an aggravating circumstance unless all jurors are unanimously agreed that it exists beyond a reasonable doubt.

2) With respect to mitigating circumstances, however, the uniform jury instructions fail to explain to jurors that mitigating circumstances do not have to be found unanimously by the jury before they can be considered.

3) These uniform jury instructions clearly imply that the jury has to unanimously find mitigating as well as aggravating circumstances before they can consider evidence in mitigation in determining sentence. The Supreme Court has held that jury instructions which either require unanimous findings for mitigating circumstances, or which can be interpreted to require such unanimous findings, are unconstitutional and require vacation of any resulting death sentence.

MICROFILM ORIGINAL 41 PAGE# 777

WHEREFORE, Defendant ask that this objection to these uniform jury instructions be sustained.

Authorities:

McKoy v. North Carolina, 110 S.Ct. 1227 (1990);
Mills v. Maryland, 486 U.S. 367, 384, 108 S.Ct. 1860, 1870 (1988);
U.S. Const. Amends. VIII, XIV.

Respectfully submitted,

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ATTORNEY FOR JOSHUA D. STUMP

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James T. Rowan
James T. Rowan

MICROFILM ROLL # 41 PAGE# 198

IN THE DISTRICT COURT OF LINCOLN COUNTY
STATE OF OKLAHOMA

FILED
JAN 12 1996
Linda Siler, Ct. Clerk, Lincoln Co. Okla. Deputy
By [Signature]

STATE OF OKLAHOMA,)
)
Plaintiff,)
)
-vs-) Case No. CF-95-104
)
JOSHUA D. STUMP,)
)
Defendant.)

MOTION FOR ADDITIONAL PEREMPTORY CHALLENGES
AND BRIEF IN SUPPORT THEREOF

COMES NOW the Accused, Joshua D. Stump, and moves this Honorable Court for additional peremptory challenges beyond the nine which are allowed by 22 O.S. § 655. In support of this motion, the Accused submits the following:

ARGUMENT AND AUTHORITY

The Oklahoma Statutes, specifically 22 O.S. § 655, provide that a defendant is entitled to nine peremptory challenges in a prosecution for first degree murder. Section 655 was enacted in 1975 prior to the pivotal landmark case of Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978 (1976).

In Woodson, the United State Supreme Court declared that "the penalty of death is qualitatively different from a sentence of imprisonment, however long." *Id.* at 2991. This requires a heightened degree of sentence reliability in death penalty cases. *Id.* See also Lockett v. Ohio, 438 U.S. 586, 98 S.Ct. 2954 (1978), and Eddings v. Oklahoma, 455 U.S. 104, 102 S.Ct. 869 (1982).

Under 22 O.S. § 655, there is no distinction made as to the number of peremptory challenges in a first degree murder case a defendant is entitled to if the State is seeking the death

MICROFILM ROLL # 47 PAGE# 1545

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penalty. Thus, a defendant who is fighting for his very life against the ultimate penalty of death is not entitled to any more peremptory challenges than a first degree murder defendant who merely faces life or life without the possibility of parole.

Since Section 655 does not consider the qualitative difference between the death penalty and mere imprisonment as mandated by the United States Supreme Court in Woodson, supra., the Accused respectfully requests this Court not to limit the Accused's peremptory challenges to nine as recommended by Section 655.

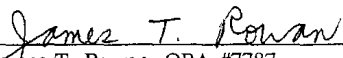
To ensure, without procedural limitations, a fair and impartial jury and a jury that is neutral and free of any class or racial bias, and that there is a fair cross-section of the community on the jury, the Accused requests that this Honorable Court grant additional peremptory challenges.

WHEREFORE, premises considered, the Accused respectfully requests that this Honorable Court grant the Accused's Motion for Additional Peremptory Challenges.

ADDITIONAL AUTHORITY:

Art. II, §§ 7 and 20, Oklahoma Constitution
6th, 8th, and 14th Amendments, United States Constitution
Taylor v. Louisiana, 419 U.S. 522, 95 S.Ct. 692 (1975).

Respectfully submitted,


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ATTORNEY FOR JOSHUA D. STUMP

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James T. Rowan
James T. Rowan

IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
Plaintiff,)
)
-vs-)
)
JOSHUA D. STUMP,)
)
Defendant.)

Case No. CF-95-104

FILED
JAN 12 1996
8:55am
Linda Siler, C. Clk. Lincoln Co. Okla.
By: [Signature] Deputy

**MOTION TO PRECLUDE PRETRIAL EXEMPTION,
PRETRIAL EXCUSAL OR PEREMPTORY EXCUSAL OF
POOR JURORS, OR IN THE ALTERNATIVE, QUASH THE ARRAY**

The Defendant moves this Court to refrain from granting pretrial exemptions, pretrial excusals, and/or peremptory excusals of economically disadvantaged jurors. In support of this motion, the Defendant states the following:

1. Joshua D. Stump is an indigent person charged with Murder in the First Degree. The State of Oklahoma is seeking the death penalty.
2. Despite constitutional provisions which require that a jury be drawn from a fair cross-section of the community, poor jurors are often granted a pretrial hardship exemption or excusal or, these poor jurors are later released by way of peremptory challenge for the reason that they are economically disadvantaged and that jury service would further exacerbate their economic problems.
3. The excusal and/or exemption of poor jurors circumvents the Defendant's right to a jury of his peers. Economically disadvantaged potential jurors are entitled to take part as active participants in the judicial system and have an opportunity to sit on a jury despite financial hardship.
4. Consequently, the Defendant requests the following:
 - (a) That the trial judge grant no pretrial excusals and/or hardship exemptions to potential jurors whose only claim of hardship is economically based;
 - (b) That the administrative venire judge and/or trial judge generally voir dire on the subject of economic disadvantage, and allow limited voir follow-up voir dire on the same subject by defense counsel;

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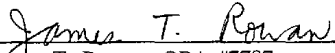
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- (c) That the trial judge inform economically disadvantaged jurors that they are eligible to have costs associated with employment and/ or child care paid by the court fund.

AUTHORITY:

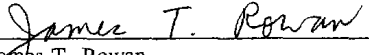
Taylor v. Louisiana, 419 U. S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975)
Duren v. Missouri, 439 U.S. 370, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979)
6th and Fourteenth Amendments, U.S. Constitution
Article 2, §§ 7 and 20, Oklahoma Constitution

Respectfully submitted,


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Oklahoma Indigent Defense System
Capital Trial Division
P. O. Box 926
Norman, OK 73070-0926
(405) 329-4272
ATTORNEY FOR JOSHUA D. STUMP

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James T. Rowan

IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
Plaintiff,)
)
-vs-)
)
JOSHUA D. STUMP,)
)
Defendant.)

Case No. CF-95-104

FILED
JAN 12 1996
Linda Siler, Ct. CLK, Lincoln Co. Okla.
By *[Signature]* Deputy

MOTION FOR DISCOVERY OF PRIOR JURY SERVICE

COMES NOW the Defendant, by and through his attorney of record, and moves this Court to order the State to produce the following discovery by a date certain:

The district attorney of Lincoln County, Oklahoma, may have written information which may reflect the past jury service of individual jurors in this county, containing information as to the type of case in which they served as jurors, the verdict rendered in the case, and the sentence imposed when a guilty verdict was reached, and the position taken by individual jurors when the jury, as a whole, was unable to reach a verdict as to the innocence or guilt of a particular defendant. This information requested is to be limited to those individual prospective jurors present on the panel of this case when tried, or any who may be on the subsequent jury impaneled to hear this case.

As a factual basis for this motion, Defendant states that the information requested is material to matters involved in the present action and is a factor in the preparation of his defense, and specifically:

ORIGINAL

MICROFILM ROLL # 41 PAGE# 784

- a) The information does not constitute the work product of the State of Oklahoma nor does it represent in any manner the State's notes or reports concerning this case. The information of past jury service, if examined by this Honorable Court, will reflect that said information is not a part of the written record, and therefore, does not fall within the purview of the work product doctrine;
- b) This factual and analytical information is or may be now available to attorneys representing the State of Oklahoma, and it is absolutely necessary and material that the defense prepare for trial and protect the Defendant's right to a fair and impartial selection of jurors as accorded him under the Oklahoma and United States Constitutions;
- c) The defense further states that it cannot, under the rules governing voir dire examination, ask or receive the information which the State of Oklahoma will have in their selection of the jurors; therefore, the Defendant's right to a fair and impartial trial will be prejudiced without this information;
- d) The Defendant further contends that such information is necessary and material in determining if it is necessary to exercise the Defendant's challenges for cause and/or peremptory challenges; and
- e) The Defendant further contends that such information was accumulated at public expense.

ARGUMENT AND AUTHORITY

The defense contends that the denial of the right to examine such information relative to all prospective jurors on the panel places the Defendant at a marked disadvantage to the prosecution in regards to the selection of an impartial jury, thereby (a) depriving the Defendant of a fair trial, (b) denying the right of the Defendant to select an impartial jury, and (c) depriving the Defendant of effective assistance of counsel. These acts of the State are in violation of the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution, and sections 7, 9, and 20 of the Oklahoma Constitution. If the above items are in the possession of the State of Oklahoma and its agencies, the Defendant has no means of inspecting said items unless the Court orders the State to produce them.

Possession and use of said information without disclosure to the defense constitutes a violation of the Defendant's constitutional right to an impartial jury in violation of the Sixth and Fourteenth Amendments of the Constitution of the United States in that its employment by the prosecution in determining peremptory challenges results in the systematic exclusion of jurors who have previously served on juries which have returned not guilty verdicts and in the stacking of the jury with persons whose previous jury records indicate they are or may be prosecution-minded.

The Sixth and Fourteenth Amendments guarantee to an accused a fair trial by a panel of impartial jurors. See Irvin v. Dowd, 366 U.S. 717, 81 S.Ct. 1659 (1961). When circumstances create the "likelihood or appearance" of bias, the right to due process is denied, Peters v. Kiff, 407 U.S. 493, 502, 92 S.Ct. 2163, 2168 (1972) and our criminal justice system has "always endeavored to prevent even the probability of unfairness." In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625 (1955).

Although the State has the power to exercise peremptory challenges to exclude prospective jurors in capital murder cases, it "does not extend beyond its interest in removing those jurors who would frustrate the State's legitimate interest in administering constitutional capital sentencing schemes by not following their oaths." Gray v. Mississippi, 481 U.S. 648, 658, 107 S.Ct. 2045, 2051 (1987), citing Wainwright v. Witt, 469 U.S. 412, 423, 105 S.Ct. 844, 851 (1985).

It is well-settled that the peremptory challenge is not exempt from scrutiny under the Sixth Amendment. The United States Supreme Court has repeatedly recognized that "peremptory challenges are a creature of statute and are not required by the Constitution." Ross

v. Oklahoma, 487 U.S. 81, 89, 108 S.Ct. 2273 (1988). Thus, when a constitutional right conflicts with the statutory right of peremptory challenges, the constitutional right prevails. See Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986); Gray, supra., 107 S.Ct. at 2053-55. (State may not use peremptory challenges to violate Equal Protection Clause).

Although a prosecutor is ordinarily entitled to exercise peremptory challenges for any reason that is related to his views concerning the outcome of the case, he may not violate any of the constitutional commands set out in the United States and Oklahoma Constitutions. "[T]he decision whether a man deserves to live or die must be made on scales that are not deliberately tipped toward death." Witherspoon, supra., 88 S.Ct. at 1776-77 n. 20. The clandestine and systematic exclusion of jurors who have previously voted "not guilty" and the stacking of the jury with jurors who have previously voted "guilty" results in a prosecution-minded jury that tips the scales toward death and deprives the Accused of the impartial jury which he is entitled to. See Adams v. Texas, 448 U.S. 38, 50, 100 S.Ct 2521, 2529 (1980).

It is violative of the United States and Oklahoma Constitutions to allow prosecutors to use peremptory challenges in this manner so as to produce a jury that is uncommonly willing to convict a person and sentence him to death.

The Sixth and Fourteenth Amendments' constitutional right to an impartial jury goes to the very integrity of our criminal justice system. If this Court allows the State to use peremptory challenges in such a manner, the capital defendant's right to an impartial jury will be rendered meaningless, and the abusive use of the peremptory challenge will be sanctioned.

WHEREFORE, premises considered, the Accused requests that this Court inquire of the State as to whether the above information exists, and if it does, order that it be turned over to the Accused prior to the beginning of voir dire in this trial.

Respectfully submitted,

James T. Rowan
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Oklahoma Indigent Defense System
Capital Trial Division
P.O. Box 926
Norman, OK 73070-0926
(405) 329-4272
ATTORNEY FOR JOSHUA D. STUMP

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James T. Rowan
James T. Rowan

IN THE DISTRICT COURT OF LINCOLN COUNTY
STATE OF OKLAHOMA

FILED
JAN 12 1996
By *[Signature]*
Wanda Siler, Ct. Clk, Lincoln Co. Okla
Deputy

STATE OF OKLAHOMA,)
)
Plaintiff,)
)
-vs-) Case No. CF-95-104
)
JOSHUA D. STUMP,)
)
Defendant.)

MOTION FOR JURY QUESTIONNAIRE

COMES NOW the Accused, Joshua D. Stump, and requests this court to allow initial voir dire by means of the jury questionnaire submitted by defense (attached). This method allows the Court to review specific questions asked and avoids needless repetition, yet allows for thorough questioning and candid answers from the potential jurors and an opportunity to more fully express thoughts and opinions without the inhibiting effect of a large and unknown audience. The questionnaire is also economical in time, both to the Court and counsel as well as to the venire panel.

The suggested procedure is to call the venire panel down on morning of trial, assign numbers to each and distribute the questionnaires accordingly. After the forms are completed, the venire is released until the following day, at which time, by groups of 18 or so, they return at incremental periods for follow-up voir dire.

This reduces the overall amount of time required for voir dire and is less taxing on the venire as a whole. This procedure has been used previously in the Oklahoma County Courthouse in capital cases and was effective in both time and substantive voir dire.

The Accused also requests this be used in conjunction with individual voir dire in capital punishment, moved for in separate motion before this Court.

MICROFILM ROLL # ORIGINAL PAGE# 1789

WHEREFORE, premises considered, the Accused asks this motion be granted.

Respectfully submitted,

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Capital Trial Division
P.O. Box 926
Norman, OK 73070-0926
(405) 329-4272
ATTORNEY FOR JOSHUA D. STUMP

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James T. Rowan
James T. Rowan

MICROFILM ROLL # 41 PAGE# 1790