

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-1229-2015  
 :  
 DERRICK BOONE, :  
 :  
 Defendant : Motion for Individual Voir Dire

**OPINION AND ORDER**

Defendant is charged by Information filed on August 14, 2015 with criminal homicide and related offenses. It is alleged that on April 25, 2015 Defendant was at the Fifth Avenue Tavern in Williamsport, Pennsylvania and was involved in a fight with Yusef Wilson. The fight allegedly escalated to the point that Defendant pulled out a handgun and fired shots at Mr. Wilson, which resulted in Mr. Wilson being hit, collapsing to the floor and eventually dying.

Defendant is a black male who filed a motion for individual voir dire on September 11, 2017. Defendant contends, among other things, that juries in Lycoming County are, in the vast majority of cases, all white and that general voir dire of jury panels is ineffective in identifying prospective jurors who have racially biased views.

Defendant alleges that attempts by both the court and counsel to elicit prospective jurors' opinions about race "have been totally unsuccessful, thereby neither allowing counsel or the defendant to intelligently exercise peremptory challenges and challenges for cause."

As a result, Defendant alleges that the failure to permit individual voir dire will deny him a fair trial in violation of the due process and equal protection guarantees set

forth in both the United States Constitution and the Pennsylvania Constitution.

The court held an argument on Defendant's motion on September 22, 2017. Given the nature of Defendant's claim, the court took the matter under advisement and is issuing this Opinion prior to jury selection.

The purpose of voir dire is securing a competent, fair, impartial and unprejudiced jury. *Commonwealth v. Mayo*, 272 Pa. Super. 115, 414 A.2d 696, 698 (1979). To obtain such, a trial judge may grant, within his sound discretion, the right to conduct individual voir dire of prospective jurors. *Id.*

As former U.S. Supreme Court Justice Thurgood Marshall previously noted:

“...I wish I could say that racism and prejudice were only distant memories.... We must dissent from the indifference. We must dissent from the apathy. We must dissent from the fear, the hatred and the mistrust.... We must dissent because America can do better, because America has no choice but to do better.”

Excerpts from Thurgood Marshall's Liberty Medal Acceptance Speech, Independence Hall, Philadelphia, PA (July 4, 1992).

Indeed, this court's past experience as an attorney and trial judge is such that racism and prejudice are still present in our society and among selected individuals and groups. As Harper Lee, however, eloquently stated in her classic book, *To Kill a Mockingbird*: “The one place where a man ought to get a square deal is in a courtroom, be he any color of the rainbow, but people have a way of carrying their resentments right into a jury box.”

“[V]oir dire inquiry into the racial bias of prospective jurors is normally required only where there are special circumstances in the case, other than the different races of the victim and the defendant, which makes it racially sensitive.” *Commonwealth v. Marrero*, 546 Pa. 596, 687 A.2d 1102, 1108 (1996). “A trial court’s rulings concerning the scope of voir dire must be considered in light of the factual circumstances of a particular criminal episode, and, in a given case, circumstances may be presented which render the case racially sensitive, thus making it necessary to inquire into racial attitudes of potential jurors.” *Commonwealth v. Richardson*, 504 Pa. 358, 473 A.2d 1361, 1363 (1984).

Understanding the circumstances under which this court would be obligated to conduct individual or more exacting voir dire is different, however, than exercising one’s discretion to permit such. This court understands that this is not a mixed race case; individuals in bars get in fights; individuals in bars, as well as other places, carry guns; and individuals lose their tempers and commit heinous acts of violence against others. These individuals could be of any race.

On the other hand, the defendant in this case is black. To echo the sentiments of former Pennsylvania Supreme Court Chief Justice, Robert Nix Jr., this court will not ignore as a judge what it knows as a man and member of this community. This court can and will combat prejudice with all the vigor of the law. As then Chief Justice Nix noted in his dissenting Opinion in *Richardson*, counsel must “be allowed to ascertain of prospective jurors, whether personal deep seated biases would influence such a judgment. Often such predilections are consciously not evident even to the one possessing them and cannot be

uncovered by the general questions permitted in this case.” 473 A.2d at 1364-1365 (C.J. Nix, dissenting). By permitting such an inquiry, the court avoids “the exacerbation of the cancer of the mind and spirit that is racial prejudice.” *Id.* at 1365.

After having considered the options in this case, the court will grant in part Defendant’s motion. The court will conduct a general inquiry of the entire panel with respect to racial prejudice and related matters. If the court is then of the opinion, based on all of the circumstances, that individual voir dire is appropriate, the court will permit defense counsel to follow-up with any prospective jurors on an individual basis. As recently deceased United States Supreme Court Justice Antonin Scalia noted: “. . . some very good people have some very bad ideas. And if you can’t separate the two . . . you don’t want to be a judge.”

This permitted individual voir dire may take place only with respect to the remaining members of the panel after all of the other questioning has taken place.

**ORDER**

**AND NOW**, this \_\_\_ day of October 2017, the court GRANTS in part, Defendant’s motion for individual voir dire as set forth in this Opinion.

By The Court,

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Marc F. Lovecchio, Judge

cc: Public Defender’s Office (KO/NI)  
District Attorney’s Office (WM/NS)  
Gary Weber, Lycoming Reporter  
Work File