

JURY SELECTION: URBAN VS. RURAL

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The single purpose for voir dire is the ascertainment of the impartiality of jurors, their ability to treat the cause on the merits with objectivity and freedom from bias and prior inclination.
Speed v. State, 270 Ga. 688, 691, 512 S.E.2d 896 (1999).

At the turn of the century, I produced an analysis of the process commonly known among trial lawyers as “voir dire.” That paper demonstrated the importance, and the practical application, of incorporating and delivering the theory of the prosecution case during jury selection. Having tried over 50 jury trials since that paper was written, this will be an occasion to revisit some of the concepts and practice pointers of old, and to expand the discussion to accommodate the reality - that some Georgia prosecutors work in counties where cows outnumber people, while some work with jurors who have never driven on a dirt road.

The sculptor, when asked how she developed such a close likeness to her subject, responded: "It's easy. I just chipped away everything that didn't belong." Like a finished sculpture, the jury will be the work of the prosecutor who will carefully chip the venire to reveal the jurors most qualified to do justice - a legacy to those who will co-exist with the accused.

One of the great contradictions of trial practice is that the process of jury selection, with a single statutory purpose, is so dynamic that it is the primary indicator of the outcome of the trial. The seeming contradiction is not a mystery, however, when the dynamics of the process are sorted and understood. The successful trial lawyer will carefully isolate, study, practice, and

critique every facet of jury selection to eliminate every undesirable practice and optimize the approaches that ensure a favorable verdict.

This discussion will address the broad purpose of voir dire in the context of a mobile population of potential jurors in Georgia who identify themselves by geographic, social, economic, historical and political affiliations, among others - sometimes predictably. Honoring and understanding the arguably predictable impact of such affiliations on the juror's service is the baseline for any method of jury selection. It is the unpredictability of the dominant allegiances of any juror that defines the importance of effective voir dire.

When selecting a jury in a county with a population of fewer than 25,000, one thing is certain: The jurors know everything about one another's lives, even if it isn't true. The challenge presented by that reality is two-fold - 1) To learn as much as possible about what the jurors know about witnesses who are significant to the prosecution's case, and 2) To create a mindset among the jurors that is conducive to judging the facts and the law without preconceived notions. Working in the rural environment is especially challenging because essential information must be gathered to enable the prosecutor to make reasoned peremptory strikes, while special care must be taken to avoid alienation of even a single venireman. The jurors' lives in a small community are interwoven and interdependent. They may be former classmates, relatives, customers, fellow Rotarians, or all of the foregoing. They know one another's pasts and protect one another's confidences. What the prosecutor cannot develop by questions, he must render harmless by educating the jury on their role.

Although the challenges in selecting the urban jury are different, they require vigilance and preparation. Although the Fulton/DeKalb/Gwinnett/Cobb jurors may be somewhat transient, those in the remaining urban centers are not. They frequently can trace their heritage

in the community for several generations. The result is the potential to select a jury with strong sense of community and a vested interest in the quality of life in the county. Trying to avoid "writing through a 'rose-colored' pen," this lawyer has enjoyed working with urban juries as much as rural ones. The challenge is to instill confidence in the jury panel while developing a rapport; and to gain invaluable information for the most effective use of peremptory strikes.

The "voir dire challenge" was sufficiently described by William Shakespeare:

All the world's a stage,
And all the men and women merely players:
They have their exits and their entrances;
And one man in his time plays many parts,
His acts being seven ages. At first the infant,
Mewling and puking in the nurse's arms.
And then the whining school-boy, with his satchel
And shining morning face, creeping like snail
Unwillingly to school. And then the lover,
Sighing like furnace, with a woeful ballad
Made to his mistress' eyebrow. Then a soldier,
Full of strange oaths and bearded like the pard,
Jealous in honour, sudden and quick in quarrel,
Seeking the bubble reputation
Even in the cannon's mouth. And then the justice,
In fair round belly with good capon lined,
With eyes severe and beard of formal cut,
Full of wise saws and modern instances;
And so he plays his part. The sixth age shifts
Into the lean and slipper'd pantaloon,

With spectacles on nose and pouch on side,
His youthful hose, well saved, a world too wide
For his shrunk shank; and his big manly voice,
Turning again toward childish treble, pipes
And whistles in his sound. Last scene of all,
That ends this strange eventful history,
Is second childishness and mere oblivion,
Sans teeth, sans eyes, sans taste, sans everything.

(As You Like It, Act II, Scene 7)

Although the trial lawyer does indeed "play many parts," it is the jury that is comprised of the metaphorical infant, school boy, lover, soldier, justice, pantaloon and second childishness. The challenge is to assemble and energize the diverse personalities and "characters" into a cast of supporting players. Enter the prosecutor, in the role of lead actor/actress and director. To succeed, he or she must know and control every part of the trial, from voir dire through jury instructions. Reserving matters post jury selection for another day, the following precepts are essential to that success.

1. Know the law:

Rules governing jury selection, like evidentiary rules, are established by statute - statutes that are often consulted in crisis or after error has occurred. Contrary to common belief, even superior court judges are sometimes unaware of the nuances that govern the initial stage of a trial - the part most likely to affect the fundamental right to a fair and impartial jury. Jurors are keenly attentive to who has a command of those occasions when questions arise during the selection process. Their confidence ordinarily follows those observations. The following statutes have been assembled in the order that their subject matter is commonly encountered.

OCGA §15-12-160. Required panel of jurors in felony trial; summoning tales jurors where necessary:

"When any person stands indicted for a felony, the court shall have impaneled 30 jurors from which the defense and prosecution may strike jurors; provided, however, that in any case in which the state announces its intention to seek the death penalty, the court shall have impaneled 42 jurors from which the defense and state may strike jurors. If, for any reason, after striking from the panel there remain less than 12 qualified jurors to try the case, the presiding judge shall summon such numbers of persons who are competent jurors as may be necessary to provide a full panel. In making up the panel or successive panels, the presiding judge shall draw the tales jurors

from the jury box of the county and shall order the sheriff to summon them."

OCGA § 15-12-168. Authority to call alternate jurors:

"Whenever in the opinion of a judge of a superior court any felony trial is likely to be a protracted one, immediately after the jury has been impaneled and sworn the court shall direct the calling of one or more additional jurors to be known as "alternate jurors."

OCGA §15-12-128. Term of service as tales juror:

"No person shall be competent or compellable to serve as a tales juror upon the trial jury in a court for more than two weeks at any one term. However, this Code section shall not apply to any person regularly drawn for jury duty nor to jurors actually engaged in the trial of a case at the expiration of the two weeks."

OCGA §15-12-125. Demand of jury panels for misdemeanor trials:

"For the trial of misdemeanors in all courts, each party may demand a full panel of 12 competent and impartial jurors from which to select a jury. When one or more of the regular panel of trial jurors is absent or for any reason disqualified, the judge, at the request of counsel for either party, shall cause the panel to be filled by additional competent and impartial jurors to the number of 12 before requiring the parties or their counsel to strike a jury. From this panel, the defendant and the state shall each have the right to challenge three jurors peremptorily. The defendant and the state shall exercise their challenges as provided in Code Section 15-12-166. The remaining six jurors shall constitute the jury."

OCGA §15-12-135. Disqualification for relationship to interested party

"(a) All trial jurors in the courts of this state shall be disqualified to act or serve in any case or matter when such jurors are related by consanguinity or affinity to any party interested in the result of the case or matter within the sixth degree as computed according to the civil law. Relationship more remote shall not be a disqualification.

(b) Notwithstanding subsection (a) of this Code section, any juror, irrespective of his relationship to a party to the case or his interest in the case, shall be qualified to try any civil case when there is no

defense filed unless one of the parties to the case objects to the related juror."

OCGA §15-12-163. Challenges for cause; hearing of evidence; when objection may be made:

"(a) When each juror is called, he shall be presented to the accused in such a manner that he can be distinctly seen.

(b) The state or the accused may make any of the following objections to the juror:

(1) That the juror is not a citizen, resident in the county;

(2) That the juror is under 18 years of age;

(3) That the juror is incompetent to serve because of mental illness or mental retardation, or that the juror is intoxicated;

(4) That the juror is so near of kin to the prosecutor, the accused, or the victim as to disqualify the juror by law from serving on the jury;

(5) That the juror has been convicted of a felony in a federal court or any court of a state of the United States and the juror's civil rights have not been restored; or

(6) That the juror is unable to communicate in the English language.

(c) It shall be the duty of the court to hear immediately such evidence as is submitted in relation to the truth of these objections; the juror shall be a competent witness for this purpose. If the judge is satisfied of the truth of any objection, the juror shall be set aside for cause."

OCGA § 15-12-167. Time for challenge and hearing thereon:

"If known to a party or his counsel, any objections to a juror for cause shall be made before the juror is sworn in the case. After a juror has been found competent, no other or further investigation before triers or otherwise shall be had, provided that newly discovered evidence to disprove the juror's answer or to show him incompetent may be heard by the judge at any time before the prosecuting counsel submits any of his evidence in the case. If the

juror is proved incompetent, the judge shall order him to withdraw from the jury and shall cause another juror to be selected."

OCGA §15-12-131. Examination of jurors in panels:

"In the examination of individual jurors by counsel for the parties in civil and criminal cases, as provided in Code Section 15-12-164, applicable to felonies, and Code Section 15-12-133, applicable to all cases, it shall be the duty of the court, upon the request of either party, to place the jurors in the jury box in panels of 12 at a time, so as to facilitate their examination by counsel."

OCGA §15-12-133. Right to individual examination of panel; matters of inquiry:

"In all civil cases the parties thereto shall have the right to an individual examination of the panel of jurors from which the jury is to be selected, without interposing any challenge. In all criminal cases both the state and the defendant shall have the right to an individual examination of each juror from which the jury is to be selected prior to interposing a challenge. The examination shall be conducted after the administration of a preliminary oath to the panel or in criminal cases after the usual voir dire questions have been put by the court. In the examination, the counsel for either party shall have the right to inquire of the individual jurors examined touching any matter or thing which would illustrate any interest of the juror in the case, including any opinion as to which party ought to prevail, the relationship or acquaintance of the juror with the parties or counsel therefor, any fact or circumstance indicating any inclination, leaning, or bias which the juror might have respecting the subject matter of the action or the counsel or parties thereto, and the religious, social, and fraternal connections of the juror."

OCGA § 15-12-165. Number of peremptory challenges:

"Every person accused of a felony may peremptorily challenge nine of the jurors impaneled to try him or her. The state shall be allowed the same number of peremptory challenges allowed to the defendant; provided, however, that in any case in which the state announces its intention to seek the death penalty, the defendant may peremptorily challenge 15 jurors and the state shall be allowed the same number of peremptory challenges."

OCGA § 15-12-169. Manner of selecting alternate jurors:

"Alternate jurors must be drawn from the same source and in the same manner and have the same qualifications as the jurors already sworn. They shall be subject to the same examination and challenges. The number of alternate jurors shall be determined by the court. The state and the defendant shall be entitled to as many peremptory challenges to alternate jurors as there are alternate jurors called. The peremptory challenges allowed to the state and to the defendant in such event shall be in addition to the regular number of peremptory challenges allowed in criminal cases to the defendant and to the state as provided by law. When two or more defendants are tried jointly, the number and manner of exercising peremptory challenges shall be determined as provided in Code Section 17-8-4."

OCGA §15-12-164. Questions on voir dire; setting aside juror for cause:

"(a) On voir dire examination in a felony trial, the jurors shall be asked the following questions:

(1) "Have you, for any reason, formed and expressed any opinion in regard to the guilt or innocence of the accused?" If the juror answers in the negative, the question in paragraph (2) of this subsection shall be propounded to him;

(2) "Have you any prejudice or bias resting on your mind either for or against the accused?" If the juror answers in the negative, the question in paragraph (3) of this subsection shall be propounded to him;

(3) "Is your mind perfectly impartial between the state and the accused?" If the juror answers this question in the affirmative, he shall be adjudged and held to be a competent juror in all cases where the authorized penalty for the offense does not involve the life of the accused; but when it does involve the life of the accused, the question in paragraph (4) of this subsection shall also be put to him;

(4) "Are you conscientiously opposed to capital punishment?" If the juror answers this question in the negative, he shall be held to be a competent juror.

(b) Either the state or the defendant shall have the right to introduce evidence before the judge to show that a juror's answers, or any of them, are untrue. It shall be the duty of the judge to determine the truth of such answers as may be thus questioned before the court.

(c) If a juror answers any of the questions set out in subsection (a) of

this Code section so as to render him incompetent or if he is found to be so by the judge, he shall be set aside for cause.

(d) The court shall also excuse for cause any juror who from the totality of the juror's answers on voir dire is determined by the court to be substantially impaired in the juror's ability to be fair and impartial. The juror's own representation that the juror would be fair and impartial is to be considered by the court but is not determinative."

OCGA §15-12-166. Jurors not challenged to be sworn:

"If a juror is found competent and is not challenged peremptorily by the state, he shall be put upon the accused. Unless he is challenged peremptorily by the accused, the juror shall be sworn to try the case."

OCGA §15-12-172. Replacement of incapacitated jurors; effect of Replacement:

"If at any time, whether before or after final submission of the case to the jury, a juror dies, becomes ill, upon other good cause shown to the court is found to be unable to perform his duty, or is discharged for other legal cause, the first alternate juror shall take the place of the first juror becoming incapacitated. Further replacements shall be made in similar numerical sequence provided the alternate jurors have not been discharged. An alternate juror taking the place of any incapacitated juror shall thereafter be deemed to be a member of the jury of 12 and shall have full power to take part in the deliberations of the jury and the finding of the verdict. Any verdict found by any jury having thereon alternate jurors shall have the same force, effect, and validity as if found by the original jury of 12."

OCGA §15-12-141. Jury deliberation rooms; furnishing food and nonalcoholic beverages:

"The governing authority of each county shall provide facilities for the impaneling of juries and for their deliberations. Jury deliberation rooms shall ensure the privacy of the jurors and include space, furnishings, and facilities conducive to reaching a fair verdict. The deliberation rooms shall be safe and secure. To the extent feasible, juror facilities shall be arranged to minimize contact between jurors and parties, counsel, and the public. While the jury is deliberating,

the presiding judge may direct them to be furnished with such food and nonalcoholic beverages as the judge shall think proper."

OCGA § 17-9-2. Jury to judge law and facts and give general verdict; imposition of sentence; form and construction of verdicts:

"The jury shall be the judges of the law and the facts in the trial of all criminal cases and **shall give a general verdict of "guilty" or "not guilty."** Upon a verdict of "guilty," the sentence shall be imposed by the judge, unless otherwise provided by law. Verdicts are to have a reasonable intendment, are to receive a reasonable construction, and are not to be avoided unless from necessity." (Emphasis added.)

Favors v. State, 234 Ga. 80, 214 S.E.2d 645 (1975), (overruled on unrelated grounds in Matthews v. State, 268 Ga. 798, 493 S.E.2d 136 (1997)):

The right to a ***poll of the jury*** is a material right derived from the common law. Wilson v. State, 93 Ga. App. 375, 377, 91 SE2d 854 (1956). Upon such poll, each juror may be asked whether the verdict reached in the jury room is, after looking upon the accused, still his verdict. Wilson, supra; Campbell & Jones v. Murray, 62 Ga. 86 (1878). (Emphasis added.)

In criminal cases the right to poll the jury is not discretionary, and denial of that right when timely requested is reversible error. Tilton v. State, 52 Ga. 478; Blankenship v. State, 112 Ga. 402, 37 SE 732 (1900); and Brownlow v. State, 112 Ga. 405, 37 SE 733 (1900).

A demand to have the jury polled is not complied with by asking them collectively whether or not they have agreed to the verdict. Blankenship, supra; Brownlow, supra.

A request for poll is timely when made after the verdict is read. Tilton, supra; Plummer v. State, 229 Ga. 749, 194 SE2d 419 (1972). It is not timely made after the jury disperses (Harrison v. State, 100 Ga. 264, 28 SE 38 (1897)), or after sentence is passed (Hammond v. State, 166 Ga. 213, 142 SE 895 (1928); Webb v. State, 166 Ga. 218, 142 SE 898 (1928)).

The reason the passing of sentence cuts off the time for polling the jury is that a juror may be affected by the announcement of the sentence. Robinson v. State, 109 Ga. 506, 34 SE 1017 (1900).

2. Know the judge.

"Since there is often a fine line between asking potential jurors how they would decide the case and questions that merely seek to expose bias or prejudice, the scope of the voir dire examination, of necessity, must be left to the sound discretion of the trial court."
Sallie v. State, 276 Ga. 506, 510, 578 S.E.2d 444 (2003)

Experienced trial lawyers will not be surprised to read that every trial judge is different. Although judges are restricted from comments on the evidence or the law, there is no regulation of facial expressions, voice inflexion, and body language. And many judges are pro-active in enforcing the limits of voir dire examination. Many jurors enter a courtroom for the first (and sometimes only) time in their lives. They instinctively look to the person who occupies the most elevated seat in the courtroom for cues and clues. Taking the judge to task when he/she appears to be protecting jurors is risky behavior, especially in the earliest stages of a trial. Preferably, the trial lawyer will learn from experience how to avoid interruptions of voir dire by the court, and employ lines of voir dire examination that will survive objections.

This writer found the trial brief to be a useful tool where a more painstaking line of voir dire questions was necessary. When the trial brief is delivered to the judge and opposing counsel immediately prior to commencing voir dire, the prosecutor will enjoy the benefits of the distraction as defense counsel ponders the damage rendered by a well-written brief addressing the prominent issues likely to be confronted during the trial; and the judge has reading material to pass the time, while the prosecutor conducts a thorough and effective voir dire examination. To effectively employ this technique, like any other successful endeavor during trial, requires preparation - the lifeblood of the skillful prosecutor.

3. Know the location where the crime occurred and how to get there (and demonstrate that knowledge during voir dire).

It is always appropriate for the prosecutor to ask questions to determine whether any juror has personal knowledge of the facts of the case - personal knowledge of the persons, places, times, and underlying motive. Use of detailed directions and descriptions of prominent landmarks along the way demonstrates a command of the facts and a level of preparation that invites confidence of the jurors. This is especially true in a rural setting where jurors may be curious about the well-groomed lawyer's command of the outlying byways of their hometown. To effectively demonstrate such knowledge requires confidence, which comes from physically visiting the scene and committing landmarks to memory.

4. Prepare in advance to pronounce the names of the jurors.

There is no sweeter sound to a person than the sound of his/her name, correctly pronounced. If unsure about a pronunciation, it is always best to ask the juror for assistance, and listen carefully to the response. It is neither entertaining nor a confidence-builder for a lawyer to repeatedly mispronounce the same name. I have often heard jurors marvel at lawyers who seemingly memorized the names of all the jurors in the panel. In most cases, such lawyers have diligently made good notes so that they can be referenced in an efficient manner. A lawyer who engages a juror in a pleasing manner will enjoy an advantage over his opponent.

5. Demonstrate confidence and ability.

Take a mental picture of yourself when you're standing before jurors to make that indelible first impression. Is this the look of a polished, well-prepared professional with 9.1 million clients? Are your shoes shined? Is your suit pressed? Are your notes contained in an

impressive binder? Can you readily access the most often-used authority to support your questions, positions and objections?

Speak as if the jurors are hearing impaired. (Statistics show that most of them are.) While being soft-spoken is valued at a candlelight dinner, it is an annoyance in a courtroom. If jurors cannot hear you, they also cannot answer you. If you seriously seek to gain information about their biases and prejudices, make sure the volume reflects your purpose.

Don't read your voir dire questions. Use of a key word reminder is acceptable, but you must maintain eye contact with the jurors as you deliver the voir dire questions. Reading voir dire questions from a legal pad or notebook is not. And looking beyond voir dire to maintain the momentum you have developed, have your exhibits been marked and described on an exhibit list for use by the court reporter?

6. Don't ask a question if you're unwilling to attentively listen to the answer.

On many occasions, I have watched potential jurors become incredulous that a lawyer asked an unnecessary, follow up question because the previous response was incorrectly assumed and unheeded. Jim Dedmon, the original program director of the National College of District Attorneys, referred to such voir dire as "noise." Voir dire is not an obligatory noise-making event. It should be a well-planned, carefully critiqued process of informing and persuading jurors, while gathering essential data to select the trier of fact.

7. Don't ask a question if you have no use for the information elicited.

Like most professional endeavors, victory is claimed by the professional who makes the fewest mistakes. The trial lawyer must therefore plan to capitalize on his preparation and exploit

his opponent's mistakes. It is a mistake for defense counsel to fail to determine whether jurors are friendly or sympathetic to the prosecutor, but it is a mistake that frequently occurs. It would also be a mistake for the prosecutor to assist defense counsel in eliminating jurors sympathetic to the State's case. Why would a prosecutor ask if there are jurors who know prosecutors? And why would a prosecutor ask whether a juror has friends in law enforcement? Will you strike jurors who know prosecutors or law enforcement? If so, you probably have another calling in life than trial practice.

CONCLUSION

Whether selecting a jury in rural or urban Georgia, it's best to follow the advice of the sculptor: Just chip away everything that doesn't belong (in the ideal jury). Preparation and execution is as important to an effective voir dire as to an effective evidentiary presentation or argument. However, its impact is magnified by repeated studies that show most jurors have developed fixed opinions about the case by the conclusion of opening statements.

Appendix

OBJECTIONS TO IMPROPER VOIR DIRE

The following cases give examples of voir dire questions that were either held to be improper as a matter of law, or held not to have been error for the trial judge to refuse to allow defense counsel to ask. They have been categorized for easier use of this authority, into subjects which may be addressed by the objection preceding each category.

A. OBJECTION: “The question improperly calls for prejudgment of issues in the case.”

i) “Do you, at the moment believe the defendant innocent?”
Pinion v. State, 225 Ga. 36, 165 S.E.2d 708 (1969).

ii) “If you were asked right now to return a verdict without hearing any evidence from either side, what would your verdict be?”
McNeal v. State, 228 Ga. 633, 187 S.E.2d 271 (1972).

iii) “Do you believe that just because the state has brought charges against (the defendant), he is in fact guilty?”
Todd v. State, 243 Ga. 539, 255 S.E.2d 5 (1979).

iv) “In the event the judge charged the jury that the burden was on the state to prove the defendant’s guilt beyond a reasonable doubt and the defendant did not have any burden to prove his innocence to you and that if after the court charged you this, are there any of you who would still expect the defendant to take the stand and testify as to his innocence?”
Anderson v. State, 161 Ga. App. 816, 289 S.E.2d 22 (1982)

v) “If you should believe that the defendant might be guilty, but the state has not proven this beyond a reasonable doubt, would your verdict be guilty or not guilty?”
Stock v. State, 234 Ga. 19, 26, 214 S.E.2d 514 (1975).

vi) “Would you be compelled to convict a defendant when the only evidence against that defendant was one person’s eyewitness identification?”
Jenkins v. State, 157 Ga. App. 310, 277 S.E.2d 304 (1981).

B. OBJECTION: “This is a technical legal question which is improper for voir dire.”

i) “Does everyone in this panel understand that you would be enforcing the law just as vigorously by voting not guilty, in the event the state fails to prove its case beyond a reasonable doubt, than you would voting guilty under these charges?”

Bethay v. State, 235 Ga. 371, 219 S.E.2d 743 (1975).

ii) “Do you understand that the (solicitor general’s) statements are not evidence?”

Walker v. State, 179 Ga. App. 782, 784, 347 S.E. 2d 711 (1986).

iii) “Do you have an understanding what the term presumption of innocence means to you?”

Baxter v. State, 254 Ga. 538, 543, 331 S.E. 2d 561 (1985).

iv) “What does the term reasonable doubt mean to you?”

Baxter v. State, 254 Ga. 538, 543, 331 S.E. 2d 561 (1985).

v) “Are you conscientiously opposed to the defense of self-defense?”

Parker v. State, 172 Ga. App. 540, 323 S.E. 2d 826 (1984).

vi) “Do you recognize that a defendant is presumed innocent until proven guilty beyond a reasonable doubt?”

Calloway v. State, 144 Ga. App. 457, 241 S.E. 2d 575 (1978).

vii) “Can you follow two basic rules of law that apply in every case, the presumption of innocence and the duty to not find the defendant guilty unless you believe his guilt beyond a reasonable doubt?”

Frazier v. State, 195 Ga. App. 109 (1), 393 S.E. 2d 262 (1990).

C. OBJECTION: “The question calls for a prejudgment of the credibility of witnesses.”

i) “If there is any conflict in the testimony between a police officer and another witness, would you tend to give more weight to the officer’s testimony simply because he is a police officer?”

Castell v. State, 250 Ga. 776, 784, 301 S.E. 2d 234 (1983),

Blanco v. State, 185 Ga. App. 535, 364 S.E. 2d 903 (1988).

D. Miscellaneous, objectionable questions.

OBJECTION: “The question is too general and beyond the scope of permissible voir dire under §15-15-133, (and impermissibly pries into the juror’s personal life.)” The parenthetical addendum will help explain to the jury that it is their welfare that concerns you.

i) “Will you be able to follow the instructions of the court?”
Head v. State, 160 Ga. App. 4, 6, 285 S.E. 2d 735 (1981).

ii) “Have you ever served on a grand jury or a trial jury?”
Frazier v. State, 138 Ga. App. 640, 643, 227 S.E. 2d 284 (1976).

iii) “Have you ever served on a jury in this courtroom before?”
Wiggins v. State, 252 Ga. 467, 314 S.E. 2d 212 (1984).

iv) “What verdict did you arrive at in the case you served on?”
McGinnis v. State, 135 Ga. App. 843, 219 S.E.2d 485 (1975).

v.) “Do you understand that the state knows no more about this case than you will if selected as a juror?”
Walker v. State, 179 Ga. App. 782, 784, 347 S.E. 2d 711 (1986).

vi) “Have you ever been the foreperson of a jury?”
Alderman v. State, 254 Ga. 206, 327 S.E. 2d 168 (1985).

vii) “What kind of books and magazines do you read?”
Alderman v. State, 254 Ga. 206, 327 S.E. 2d 168 (1985).

viii) “Do you smoke cigarettes?”
“Do you drink alcohol?”
“What newspapers do you regularly read?”
Frazier v. State, 138 Ga. App. 640, 643, 227 S.E. 2d 284 (1976).

ix) “Have you formed an opinion as to whether or not marijuana is an addictive drug?”
Merrill v. State, 130 Ga. App. 745, 750, 204 S.E. 2d 632 (1974).

x) “Have any of you ever served in the military?”
Brown v. State, 170 Ga. App. 398, 317 S.E. 2d 207 (1984).

E. OBJECTION: “The question impermissibly asks the juror to commit to a certain method of deliberation thereby invading the province of the jury (as the ultimate arbiter of law and fact).”

i) “Would you change your mind during deliberations if you found you were the only juror who had reasonable doubt of the defendant’s guilt?”

Curtis v. State, 168 Ga. App. 7, 308 S.E. 2d 31 (1983).

ii) “Could you keep an open mind until all the evidence is in?”

Walker v. State, 179 Ga. App. 782, 784, 347 S.E. 2d 711 (1986).

ARGUMENT

When your objection is properly articulated, and further elaboration is invited, the holding in Walker v. State, 179 Ga. App. 782, 784 will be helpful:

“The conduct of voir dire is designed to expose jury bias and not to present argument. Thus, it is within the sound discretion of the trial court and absent manifest abuse of discretion an appellate court will not interfere. Westbrook v. State, 242 Ga. 151 (3) (249 S.E.2d 524), cert. den. 439 U.S. 1102. Where the court addresses the statutory voir dire questions of O.C.G.A. §15-12-164 to prospective jurors, they are deemed prima facie competent and it is discretionary and not a matter of right as to whether the court permits further examination. Herndon v. State, 178 Ga. 832 (2) (174 S.E. 597), appeal dismissed 295 U.S. 441; accord Ford v. State, 202 Ga. 599, 602 (44 S.E. 2d 263). We find no abuse of discretion.”

VOIR DIRE IN A NUTSHELL

Rule 1: Voir dire and cross-examination are not sluggers’ games. You’ll hit 100 singles for every home run, and if you “swing for the fence” every time, you’re going to strike out most of the time.

Rule 2: There are as many different styles as there are personalities. The most successful litigators carefully incorporate preparation, confidence, courtesy and case-theory into voir dire.

CHECKLIST

- Prepare to refer to voir dire during closing argument.
- Build voir dire around the theory to be developed throughout the trial.
- Tell a story during voir dire. It is the universal language of the jury.
- Be a good story-teller. Emphasize preparation and quality of presentation.
- Identify the “power zone” of the courtroom and stay in it.
- Use persuasive language.
- Deliver the theme during voir dire from the preferred vantage point of a witness, victim, or investigator.
- Don’t develop the defense theory during voir dire.
- Listen to the questions you ask. Plan to be articulate.
- Listen to the answers you receive.
- Take good notes.
- Seek “zones of commonality” between jurors and your case and incorporate to your advantage throughout the trial.
- If in doubt, strike.

THE BATSON/McCOLLUM PROCEDURE

Georgia’s appellate courts have provided much-needed clarification of the procedure and the standards of review to be employed by trial courts and the appellate courts upon a challenge to the exercise of peremptory strikes under Batson v. Kentucky, 476 U.S. 79, 106 S.Ct 1712 (1986) and Georgia v. McCollum, 505 U.S. 42, 112 S.Ct. 2348 (1992).

All prosecutors should understand the three-step process that must be followed in every Batson/McCollum challenge, as established by Purkett v. Elem, 514 U.S. 765, 115 S.Ct. 1769 (1995):

STEP 1: The party challenging the strike must establish a prima facie inference that the strikes were exercised with a racially discriminatory intent.

Step one will require a statistical analysis of the jury venire, the jurors struck, and the jury seated. See Griffeth v. State, 224 Ga. App 462, 480 SE. 2d 889 (1997).

STEP 2: If the trial court finds a prima facie case of racial discrimination has been established, the proponent of the strike has the burden of tendering race-neutral reasons for the strike.

The proponent of the strike is not required to enunciate ‘an explanation that is persuasive, or even plausible.’ **Purkett v. Elam**, 514 U. S. 765 (115 S.Ct. 1769, 131 L. Ed. 2d 834) (1995). . . . Rather, a neutral explanation . . . means an explanation based on something other than the race of the juror Unless a discriminatory intent is inherent in the . . . proponent’s explanation, the reason offered will be deemed race neutral. Furthermore, although the proponent of the strike must provide a “clear and reasonably specific” explanation of his “legitimate reasons” for exercising the challenges,’ **Batson v. Kentucky**, 476 U. S. 79, 98, n. 20 (106 S. Ct. 712, 90 L. Ed. 2d 69) (1986), ‘what is meant by a “legitimate reason” is not a reason that makes sense, but a reason that does not deny equal protection.’ **Purkett**, 115 S. Ct. at 1771.” (Indentation omitted.) **Jackson v. State**, 265 Ga. 897, 898-899 ,463 S.E.2d 699 (1995).

STEP 3: The challenging party must prove that the proffered explanation is merely pretext for discrimination.

At this stage, the trial court will determine whether based on the totality of the circumstances, the proffered explanations for the strikes are race neutral, or whether they are implausible or unpersuasive. If the trial court finds that the opponent of the strike has proved purposeful racial discrimination,, then the court may order the jurors, who were struck, to be seated or the court may renew the selection process in whole or in part.

APPELLATE REVIEW

The appellate court reviews the trial court’s ruling under the “clearly erroneous” standard. The appellate court will not review “de novo” the plausibility or persuasiveness of the explanations in Step 2. If the trial court has found the explanations to be race neutral, the appellate court is bound by that finding unless it is clearly erroneous. See **Wilburn v. State**, 230 Ga App 619, 497 SE.2d 380 (1998), **Purkett v. Elam**, 514 U.S. 765, 115S.Ct. 1769 (1995).

BATSON/MCCOLLUM PRACTICE TIPS

- Keep statistics continually, throughout the jury selection process.
- Notate the race and gender of each venire person.
- Notate the race and gender of state’s strikes and defense strikes, separately.
- Notate the race and gender of each juror, as and when selected.
- Record in writing the reason for all peremptory strikes.
- Consider the use of a “silent strike” selection process.

- Raise any Batson/McCollum objection before the jury is sworn.
- Excuse all jurors from the courtroom before the Batson/McCollum, three-step hearing process begins.
- When explaining peremptory strikes, explain all strikes, regardless of the juror's race or gender.
- If the issue of race is significant in your mindset, then it will probably be a significant factor in the jury's deliberations, either explicit or implicit.
- If you are unconcerned with the issue of race, then it is almost certain that Georgia's jurors will not allow a racial issue to affect their duties.