

Stand

NORTH CAROLINA
GUILFORD COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
1998 JAN 22 PM 1:56 FILE NO. 97CRS-39580
GUILFORD COUNTY, C.S.C.

STATE OF NORTH CAROLINA

BY) JDR
)
)

VS.

) MOTION TO PROHIBIT THE
) PROSECUTION FROM "DEATH
) QUALIFYING" THE JURY WHICH
) DETERMINES INNOCENCE OR GUILT

RONNIE LEE KIMBLE,
DEFENDANT.

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NOW COMES the Defendant, ~~VICTOR HOLSTON~~, by and through his undersigned counsel, and respectfully moves the Court, pursuant to the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 19 and 24 of the Constitution of North Carolina, for an Order prohibiting the prosecution from excusing for cause for the innocence or guilt determination phase of the trial those jurors who would not or could not vote for the death penalty under any circumstances. As grounds for this Motion, the Defendant shows the Court the following:

1. The Defendant is charged with a capital offense and will be tried by a jury. In the course of the jury voir dire, the prosecution will ask prospective jurors their views on the imposition of the death penalty. Some jurors may be opposed to the death penalty under any circumstances and thus could never vote to impose.

2. Those opposed to the death penalty make up a significant segment of the population of the United States, the State of

North Carolina and Guilford County and their presence in the innocence or guilt phase of the Defendant's trial is essential in order for him to have a fair and representative cross-section of the community available for service on the jury which must determine his innocence or guilt.

3. Under G.S. 15A-1212(8), the prosecution will challenge for cause any juror who states that he or she would not impose a death sentence under any circumstances. The allowance of such challenges for cause against jurors with strong scruples against the death penalty will cause an undue dilution of representativeness of the jury which is to determine innocence or guilt in this case, leaving the Defendant to be tried by a "death-qualified" jury.

4. In the event such scrupled jurors are seated for the innocence/guilt determination, they may be replaced or a new jury impaneled for the penalty determination, should such a determination become necessary. G.S. 15A-2000(a)(2). There is thus no reason why a juror's views on the death penalty should be a disqualification so long as the juror is able to determine the issue of innocence or guilt.

5. Death-qualified juries are unduly guilt-prone and prosecution-prone; they are more likely to convict--on identical evidence--than non-qualified juries; and they differ in their attitudes from non-death-qualified juries in ways that make them more hostile to the defense at the outset of the trial. Death-qualified juries are systematically under-representative of women and other minorities and identifiable segments of the population.

These juries are systematically unrepresentative of the diversity of thought, opinion, viewpoint, predilection and judgment reflected in the general population. A trial and conviction by such a jury would violate the Defendant's State and Federal Constitutional rights to a fair trial by an impartial jury.

6. The procedure of death-qualifying a trial jury has several distinct effects which infringe upon the Defendant's rights to a fair trial by a jury of his peers, including the following: it reduces minority representation on the jury; it increases the likelihood that an innocent defendant will be convicted; it reduces the quality of the collective consciousness of the jury; it reduces the critical quality of the jury deliberation; it reduces the diversity of opinion on the jury; it removes "from the jury room qualities of human nature and varieties of human experience", Taylor v. Louisiana, 419 U.S. 522; and it limits the extent to which individual biases and predilections of some jurors are counter-balanced by those of others. These effects considered together impermissibly impair and violate interests protected by the Defendant's State and Federal Constitutional rights to a trial by a fair and impartial jury. Witherspoon v Illinois, 391 U.S. 510, 20 L.Ed.2d 776, (1968), Ballew v Georgia, 435 U.S. 223, 55 L.Ed.2d 234 (1978).

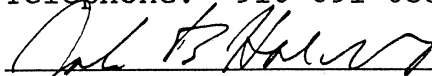
WHEREFORE the Defendant respectfully prays that jurors who are opposed to the death penalty and/or would be unable to impose the death sentence not be excluded from service on the jury which determines the innocence/guilt phase of his trial if such jurors otherwise qualify.

This this the 22 day of January, 1998.



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