

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Dwayne Anthony Bledsoe,

Defendant.

**NOTICE OF MOTION AND
MOTION FOR A
REPRESENTATIVE JURY AND
MOTION FOR PRODUCTION
OF JUROR INFORMATION**

Court File No. 27-CR-21-933

TO: THE HONORABLE PAUL SCOGGIN, JUDGE OF DISTRICT COURT AND ERIN STEPHENS, ASSISTANT HENNEPIN COUNTY ATTORNEYS.

BACKGROUND

The systemic exclusion of people of color from juries in Minnesota has been an issue that was recognized almost three decades ago by then-Justice Alan Page. While that case involved Hennepin County, the systematic exclusion of non-white jurors is rampant around the entire state. In his special concurrence in *Hennepin County v. Perry*, Justice Page outlined clear, racially discriminatory practices. He asserts the dangerous and harmful results of these practices and suggests more inclusive tactics. However, the state then, just as it does now, ignored the Justice's pleas for reform and continued to engage in discriminatory jury selection practices. Indeed, his words are better read than summarized:

While, on its face, the process used by Hennepin County to select grand jurors appears to be race-neutral, it has, for some time, disproportionately excluded people of color from participating in one of the most important and fundamental activities of our representative government. At some point, a purportedly race-neutral process that perpetuates and reinforces inequality of opportunity...is no different than a race-based process intended to produce the same result...

The compelling interest in including people of color in the justice system's decision-making process is starkly illustrated by the reactions of communities of color when they feel that they have been excluded from the system... The riots that have taken place in those cities, while deplorable and unacceptable, illustrate the frustrations of a segment of our society that feels alienated from and excluded by the one branch of government whose singular purpose is the dispensation of fair and

impartial justice... Public confidence in the integrity of the criminal system is essential for preserving community peace in trials involving race-related crimes...

Our efforts to increase the number of people of color serving on grand juries will determine the future vitality of a criminal justice system inextricably linked to race. People of color must be included and must actually serve on grand juries if we are to continue to progress as a multiracial democracy. I believe it can be done.

Perry, 561 N.W.2d at 897-901 (Page, J., concurring) (internal citations and quotation omitted).

NOTICE OF MOTION AND MOTION FOR DISCLOSURE

PLEASE TAKE NOTICE that at a session of the above-named Court to be scheduled by the Court, Mr. Bledsoe, by and through counsel, will move the Court for the following:

1. That the court vindicate Mr. Bledsoe's rights under the Sixth Amendment to the U.S. Constitution and Article I, section 6 of the Minnesota Constitution, "to be tried by an impartial jury drawn from sources reflecting a fair cross section of the community." *Berghuis v. Smith*, 559 U.S. 314, 319 (2010). "Trial by jury presupposes a jury drawn from a pool broadly representative of the community as well as impartial in a specific case." *Thiel v. Southern Pacific Co.*, 328 U.S. 217, 227 (1946) (Frankfurter, J., dissenting). Accordingly, the underrepresentation of a cognizable group in a petit jury venire can constitute a denial of the Fair Cross Section requirement of the Sixth Amendment. *Taylor v. Louisiana*, 419 U.S. 522, 531 (1975). There is no requirement that a defendant raising a fair cross-section claim must be a member of the group allegedly excluded from jury service. *Ambrose v. Booker*, 684 F.3d 638 (6th Cir. 2012).

2. That the Source Lists used to compile prospective jurors be supplemented with the names and addresses of Minnesota State Tax Filer, names, and addresses of those filing Certificates of Rent Paid.

3. That the Jury Office be ordered to specifically locate and follow up with all persons who were mailed a summons for the jury pool from which potential jurors would be drawn in this case and who failed to respond to that summons or whose summons was returned as undeliverable.

4. That the Jury Office be ordered to keep a full and accurate accounting of its efforts to locate and follow up with, or re-summons persons identified in Paragraph 3 above and provide that information to the Court and parties.

5. That Mr. Bledsoe's attorney be provided, under appropriate Protective Order, the names, ethnicity, dates of birth, addresses and other identifying information for all persons who were mailed a summons for the jury pool from which potential jurors would be drawn in this case. This includes undeliverable summons, responding persons, non-responding persons, persons deemed ineligible, and persons who requested or received an excuse from or deferral of service.

6. That Mr. Bledsoe's attorney be provided, under appropriate Protective Order, all notes, data, summaries, correspondence or other communication between any representative of the Jury Office and the persons identified in Paragraph 5 above as well as the reason for any ineligibility, excuse or deferral from jury service.

7. That Mr. Bledsoe's attorney be provided the racial breakdown of jurors that responded to jury summonses from the county from January 1, 2018 to present.

8. The annual reports prepared and submitted by the county jury office to the Chief Judge as required by Rule 806(e) be provided to Mr. Bledsoe's attorney (The "jury commission shall review the jury source list once every four years for its inclusiveness and the jury for its representativeness of the adult population in the county and reports the results to the chief judge of the judicial district."). Jury Management Rule 806(e).

A defendant raising a constitutional challenge is entitled to discovery. "Without inspection, a party almost invariably would be unable to determine whether he has a potentially meritorious jury challenge." *Test v. United States*, 20 U.S. 28 (1975). The right to challenge the jury is empty without an attendant right to discovery because "[i]t would be virtually impossible for defendants

who are endeavoring to ascertain if a successful attack on the grand [or petit] jury selection process can be advanced if the facts necessary to prove a defect in the selection process are withheld.” *State v. Ciba – Geigy Corp*, 240 N.J. Super. 511, 573 A.2d 944 (N.J. Super. A.D. 1990); *See, e.g., United States v. Royal*, 100 F. 3d 1019, 1025 (1st Cir. 1996). Only after such discovery is granted will defendants “be in a position to make informed decisions as to whether the jury selection process warrants challenge and as to whether they prefer trial by a representative jury or before the court.” *Gov’t of Canal Zone v. Davis*, 592 F.2d 887 (5th Cir. 1979).

The Supreme Court has made it clear that a defendant has a right to discovery if preparing a motion to challenge the composition of the jury. No other affirmative showing is required. *See Test v. United States*, 20 U.S. 28 (1975); *United States v. Stanko*, 528 F.3d 581 (8th Cir. 2008) (a litigant has essentially an unqualified right to inspect jury lists.).

Respectfully submitted,

OFFICE OF THE HENNEPIN COUNTY PUBLIC DEFENDER

By____/s/_____

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Dated: November 3, 2022