SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division – Felony Branch

UNITED STATES OF AMERICA	:	
v.	:	**Case No. 2022 CF2 1977**
	:	**The Hon. Neal Kravitz**
	:	
HARRY TUCKER	:	

MEMORANDUM OF LAW ON CAUSE CHALLENGES IN VOIR DIRE

Mr. Tucker, through undersigned counsel, pursuant to the Fifth and Sixth Amendment, provides this Court with the latest case law on cause challenges in *voir dire* to ensure that qualified jurors who hold reasonable doubts about the fairness of the criminal legal system are not improperly dismissed for cause. Many jurors reasonably believe that the criminal justice system is racist and unfair, and the most recent caselaw explains that these jurors can serve, providing a desirable broad array of perspectives for the jury.

I. Jurors Whose Life Experiences Cause Them to Express Their Awareness of Racism in Law Enforcement and the Criminal Justice System are Not Inherently Biased Against the Prosecution.

Striking a juror for cause solely because of her belief that the criminal justice system is unfair to people of color is a legal error that requires reversal in the District of Columbia. *See Mason v. United States*, 170 A.3d 182, 187 (D.C. 2017). In reaching this holding, the D.C. Court of Appeals correctly recognized what has long been the standard in federal courts: generalized beliefs about the fairness of the criminal justice system or the state of the law are not on their own sufficient to justify finding bias and dismissing a juror for cause. *Id.* at 185-87; *see also United States v. Padilla-Mendoza*, 157 F.3d 730, 733-34 (9th Cir. 1998) ("[A] district court cannot dismiss jurors for cause based solely on their acknowledgment that they disagree with the state of the law

that governs the case."); *King v. State*, 414 A.2d 909, 913 (Md. 1980) ("We hold that the trial court committed reversible error by excluding any juror who expressed a personal belief that the law [at issue] should be changed without inquiring whether or not that belief would prevent the juror from fairly and impartially deciding the case in accordance with existing law on the evidence presented."). By reaffirming this well-established concept, the *Mason* Court undid a discrepancy that would otherwise allow trial judges to seat jurors who believe the criminal justice system fails to apprehend enough wrongdoers but exclude jurors who believe the criminal justice system is unfair to the people of color who it most often apprehends. It is legal error to dismiss a juror for cause without a clear showing on the record that she cannot be impartial. *Doret v. United States*, 765 A.2d 47, 53 (D.C. 2000). Jurors are expected, encouraged, and empowered to consider their own knowledge and life experiences as they deliberate. S*ee, e.g., Criminal Jury Instructions for the District of Columbia* § 2.104 (5th ed. 2016) ("When you consider the evidence, you are permitted to draw, from the facts that you find have been proven, such reasonable inferences as you feel are justified *in the light of your experience*." (emphasis added)); *Townsend v. District of Columbia*, 183 A.3d 727, 732 n.9 (D.C. 2018) ("A juror can rely upon his or her *personal experience or otherwise obtained knowledge* [to weigh officer testimony on commonly observed signs of intoxication.]) (internal citation omitted) (emphasis added)). Therefore, it is vital for this Court to recognize that jurors who believe the criminal justice system is unfair or express support for the movement for Black lives are not inherently biased against the government and, absent a specific finding that they are unable to be impartial in the particular case at hand, are perfectly eligible to hear criminal cases.

A. The Court Cannot Impute Bias to a Juror Without a Record Showing that the Juror is Unequivocally Unable or Unwilling to Be Impartial in the Case at Hand.

Though judges otherwise exercise broad authority in how they conduct jury *voir dire*, imputing bias to a juror without adequate support on the record is a legal error, *Doret*, 765 A.2d at 53, as is imputing bias to a juror simply because she believes the criminal justice system is unfair to Black people. *Mason*, 170 A.3d at 187. The D.C. Court of Appeals found that the trial judge in *Mason* erred by conflating a juror's acknowledgment of her belief that the criminal justice system is unfair to Black people with an inability to impartially apply the law in that particular case. *See Mason*, 170 A.3d at 187. As *Mason* recognizes, "[i]t is possible that a potential juror who believes that the criminal justice system is unfair to Blacks might respond to that belief by having difficulty being impartial," but that belief alone, without "any finding that [the juror] herself would be unable to be impartial," is not enough to justify dismissing her for cause. *Id.*

Mason finds support for its holding in two drug possession cases: *United States v. Padilla-Mendoza* and *King v. State*. *See id.* In *Padilla-Mendoza*, the Ninth Circuit held that "a district court cannot dismiss jurors for cause based solely on their acknowledgment that they disagree with the state of the law that governs the case" and found that the trial court abused its discretion by dismissing two jurors from a possession case over a defense objection after the jurors explained that they disagreed with the state's criminalization of cannabis. *United States v. Padilla-Mendoza*, 157 F.3d 730, 733-34 (9th Cir. 1998). Though the *Padilla-Mendoza* court declined to find that the improper exclusion of those jurors prejudiced the defendant, the Ninth Circuit still recognized that courts may be required to overturn similar cases if the improper exclusion of jurors is "so egregious that the resulting jury is presumptively biased." *Id.* The Court of Appeals in *Mason*, however, recognized that excluding jurors who believe the criminal justice system is unfair to Black people

does indeed "[have] a tendency to unacceptably skew the jury in favor of one side." *Mason*, 170 A.3d at 187.

The Maryland Court of Appeals reached a similar conclusion in *King* and, unlike the Ninth Circuit, ordered a reversal after two jurors were improperly excluded from participating in a possession case over a defense objection because of their belief that cannabis laws are unjust. *King v. State*, 414 A.2d 909, 912 (Md. 1980). The Court of Appeals faulted the lower court for failing to interrogate whether the prospective jurors' disagreement with cannabis law rendered them incapable of applying the law as written without bias. *Id.* at 913. Like in *Mason*, the appellate court reversed the convictions because the trial court, in excluding jurors who expressed criticism of cannabis criminalization, "excluded the entire class of prospective jurors who believed that marijuana laws should be modified" and thus excluded a significant part of the community from serving. *Id.*

The result in *Mason* relies on the same logical underpinnings as *Padilla-Mendoza* and *King*—it is error to disqualify a juror based solely on that juror's beliefs without showing that those beliefs would irreparably interfere with the juror's ability to be unbiased. *See Mason*, 170 A.3d at 187. These cases also suggest that the popularity of the belief in question is an important consideration when determining whether the improper dismissal of the juror warrants reversal, because excluding broad swaths of the population may result in a presumptively biased jury. *See United States v. Mendoza*, 157 F.3d 730, 734 (9th Cir. 1998); *Mason v. United States*, 170 A.3d 182, 186-87 (D.C. 2017); *King v. State*, 414 A.2d 909, 913 (Md. 1980). Thus, the more popular the belief, the more likely disqualifying a juror for holding that belief warrants reversal. The Court should therefore exercise caution when contemplating whether to dismiss a juror who, like millions of Americans, joined the George Floyd protests, expressed support for the movement for Black

lives, or otherwise recognizes how racism pervades the criminal justice system.

The most recent case to touch on this issue is *People v. Silas*, 284 Cal. Rptr. 3d 48, 55 (Cal. Crt App. 1st District 2021). There the appellate court reversed a trial court's denial of a *Batson* motion by the defense. A juror had expressed support for Black Lives Matter (BLM) and under further questioning stated she could be fair despite her support for the movement. The prosecutor failed in his motion to strike her for cause and then exercised a peremptory strike against the juror. When challenged, the district attorney provided some race neutral reasons, and other justifications based on the juror's support for BLM that were belied by the record. In reversing, the appellate court found that the juror's support for BLM and concern about the fairness of the criminal justice system toward Black people couldn't even justify the low standard of allowable reasons for peremptory strikes, much less a cause challenge.

II. Courts Do Not Expect Jurors to Entirely Divorce Their Personal Knowledge or Life Experiences from Their Decision-Making Processes, Even When That Knowledge or Experience Causes Them to Express Distrust of the Criminal Justice System.

A juror whose life experiences cause her to doubt the racial fairness of the criminal justice system is no less entitled, instructed, or expected to rely on that experience when evaluating the evidence than any other juror. Far from demanding that jurors engage in the impossible task of entirely divorcing their decision-making from their lived experiences, D.C. courts instead embrace the fact that jurors bring different experiences to the table, and the pattern jury instructions given in virtually every jury trial in the District encourage jurors to do so. *Criminal Jury Instructions for the District of Columbia* § 2.104 (5th ed. 2016) ("When you consider the evidence, you are permitted to draw, from the facts that you find have been proven, such reasonable inferences as you feel are justified *in the light of your experience*." (emphasis added)); *see also Townsend v. District of Columbia*, 183 A.3d 727, 732 n.9 (D.C. 2018) ("A juror can rely upon his or her

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