

CLERK OF COURTS
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MONTGOMERY COUNTY, PENNA.
**IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY,
PENNSYLVANIA—CRIMINAL DIVISION**

2017 MAR 27 AM 9:22

COMMONWEALTH OF PENNSYLVANIA : CP-46-CR-0003932-2016
: :
v. : :
: :
WILLIAM H. COSBY, JR. : :

**COMMONWEALTH’S RESPONSE TO DEFENDANT’S MOTION FOR JURY
SELECTION PROTOCOL**

TO THE HONORABLE STEVEN T. O’NEILL, J.:

I. INTRODUCTION

1. Defendant once more comes before the Court seeking to separate himself from other similarly situated individuals, specifically other criminal defendants.¹ Defendant makes this request based solely on the “high profile nature” of the case and the apparently associated presumption on his part that the citizens of Allegheny County will have already formed opinions regarding his guilt or innocence. The Commonwealth, on the other hand, believes that it will not be difficult to find fair and impartial jurors from the venire selected by the Pennsylvania Supreme Court.
2. The Commonwealth also believes that a fair and impartial jury can be secured by relying on the standard and well-established process of jury selection already in place in Allegheny County. Special treatment is neither necessary nor appropriate.

1. Defendant, also once again, brings forth a motion that fails to comply with the requirements of Pa. R. Crim. P. 575.

3. Lastly, the Commonwealth suggests that the best way to avoid imposing any undue hardship on potential jurors is to conduct jury selection at least two weeks in advance of the start of trial on June 5, 2017.

Beginning jury selection well in advance of the start date of the trial will allow potential jurors to adjust to the necessity of sequestration.

II. DISCUSSION

1. Defendant makes two requests. First, he demands that a special written questionnaire be agreed upon and sent to a jury pool of approximately 1,500–2,000 potential jurors. Second, he requests that the Court ignore the law and Pennsylvania Rule of Criminal Procedure 634(A)(2) by increasing the number of peremptory strikes to 20.

2. With regard to his first request, defendant cites little authority. The Commonwealth does, of course, agree that the purpose of *voir dire* is to “secure[] a competent, fair, impartial, and unprejudiced jury.” *Commonwealth v. Drew*, 459 A.2d 318, 320 (Pa. 1983). The Commonwealth further agrees that the scope and manner of *voir dire* is left to the sound discretion of the trial court. *See Commonwealth v. Slocum*, 559 A.2d 50, 53 (Pa. Super. 1989). To that end, it has been the practice in Montgomery County, and no doubt across the Commonwealth, to utilize standard questionnaires along with in-court examination to secure such fair and impartial juries. Defendant is entitled to this same treatment.

3. Instead, however, he privately submitted a lengthy questionnaire to the Court that appears to be aimed exclusively at gathering information to facilitate his exercise of peremptory strikes. Such a practice is specifically prohibited. *See Slocum*, 559 A.2d at 53 (Pa. Super. 1989) (“counsel is not entitled under Pennsylvania law to ask questions intended solely to aid in the exercise of peremptory challenges”).
4. The questionnaire submitted privately to the Court also appears to be an attempt to learn potential jurors’ current opinions or glean what decisions they might make under a future set of facts developed at trial. As was pronounced in one of the cases cited by defendant, this too is prohibited. *See Drew*, 459 A.2d at 320 (“Neither counsel for the defendant nor for the Commonwealth should be permitted to . . . ask direct or hypothetical questions designed to disclose what a juror’s present impression or opinion may be or what his attitude or decision will likely be under certain facts which may be developed in the trial of the case.”).
5. Defendant makes his demand for this special written questionnaire for the sole reason that this is a “high profile” case. He cites to a number of cases as examples of other “high profile” prosecutions that utilized special written questionnaires. All of the examples cited share common features: (1) they are not followed by proper legal citations, and (2) they are not from Pennsylvania. In addition, some do not even utilize the

proper docket and caption information (*e.g.* “*U.S. v. Lil Kim*” and “The Blind Sheikh case.”).

6. While there is a dearth of case law in Pennsylvania related to the use or approval of individualized juror questionnaires, the comment to Pennsylvania Rule of Criminal Procedure 632 provides guidance. A plain reading of the final comment to that Rule implies the necessity of an agreement between both parties and the Court to utilize such an individualized questionnaire: a circumstance that is, and will remain, absent from this matter. *See* PA. R. CRIM. PRO. 632.
7. Indeed, the only complaint lodged by defendant is that, because of the media coverage of this case, some jurors will have formed fixed opinions about his guilt or innocence. Though a cynical view of the potential jurors in Allegheny County, this sort of narrow issue is easily remedied by the typical jury selection process and the standard examination conducted by the Court during group *voir dire*. The Commonwealth is well-familiar with the jury selection procedure this Court plans to employ; and it is satisfied that it will be more than sufficient and is, in fact, the most efficient method to secure a fair and impartial jury. Defendant forecasts that jury selection may take weeks; we are confident that it will not and can be completed in an expeditious fashion.²

2. During a recent trial of significant public interest in Montgomery County, *Commonwealth v. Kathleen Kane*, jury selection lasted less than a day. The jury in that case was secured after a venire of approximately 100 individuals were called.

8. Defendant also requests that the Court disregard Pennsylvania Rule of Criminal Procedure 634(A)(2) and increase the number of peremptory strikes to 20. This issue is even more easily dispatched. Pennsylvania Rule of Criminal Procedure 634 dictates that this matter, as a non-capital felony case, entitles the defendant and the Commonwealth to seven peremptory strikes each. PA. R. CRIM. P. 634(A)(2). Even if the Commonwealth agreed to this scheme, which it will not, and even if the Court wanted to permit additional peremptory strikes, the limits set by Rule 634 are firm and final. It is well-settled and easily found precedent that the right to peremptory challenges is established by law, and the trial court does not have the power to increase the number of challenges. *Commonwealth v. Colson*, 490 A.2d 811, 822 (Pa. 1985); *Commonwealth v. Wilson*, 1983 Phila. Cty. Rpt. LEXIS 58, **15 (Phila. Ct. Comm. Pl. 1983). This is true even in high-profile cases where the defendant may believe they are entitled to special treatment. *Commonwealth v. Martin*, 348 A.2d 391, 404 n.8 (Pa. 1975). Therefore, no matter how many additional peremptory strikes defendant may think he needs or is entitled to, he is not permitted to have more than any other similarly situated criminal defendant. Defendant is not entitled to, nor does he deserve, anything more or anything less than any other citizen facing criminal charges.

WHEREFORE, the Commonwealth respectfully requests that the Court DENY defendant's Motion for Jury Selection Protocol. The Commonwealth further requests that the Court schedule jury selection for a date and time in advance of the schedule June 5, 2017 trial date.

RESPECTFULLY SUBMITTED:



KEVIN R. STEELE
DISTRICT ATTORNEY

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COMMONWEALTH OF PENNSYLVANIA

CP-46-CR-3932-2016

v.

WILLIAM H. COSBY, JR.

VERIFICATION

I verify that the statements made in the foregoing response are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.



KEVIN R. STEELE
DISTRICT ATTORNEY

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CERTIFICATE OF SERVICE

I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities. I, Kevin R. Steele, District Attorney, being duly sworn according to law, depose and say that a true and correct copy of the Commonwealth's Response to Defendant's Motion For Jury Selection Protocol will be delivered to the following:

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KEVIN R. STEELE
DISTRICT ATTORNEY