

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 10-00162-16-CR-W-FJG
)	
THEODORE S. WIGGINS,)	
)	
Defendant.)	

**PROPOSALS BY DEFENDANT THEODORE S. WIGGINS REGRADING
VOIR DIRE QUESTIONS**

Comes now defendant Theodore S. Wiggins, by attorney, and does make the following proposals regarding questions to be asked of the venire during voir dire examination. Specifically, Mr. Wiggins interposes certain objections to the voir dire questions proposed by the government (Doc. 623), and also proposed additional questions on issues not raised by the government

Objections Regarding government proposed Voir Dire

Mr. Wiggins has proposed various questions on topics similar to those raised by the government in its proposed voir dire (Doc. 623). As a general proposition, Mr. Wiggins believes that his description of the issues more accurately conveys the applicable facts and law, and therefore requests that the language he proposes be used in stead of that proposed by the government.

Suggestions regarding general questions to be posed to the venire

1. Knowledge about the facts of this case

In this case, Mr. Wiggins is charged in Count 1 with conspiring with others in the intentional distribution of controlled substances and in Count 8 with distribution of an amount of controlled substance. Is there anyone who is familiar in any way with the facts about this case? Have any of you read about it in the newspapers, or on the internet, heard about it on radio or television, talked about it with any person? (IT IS SUGGESTED TO THE COURT THAT, IF ANY VENIRE PERSON ANSWERS AFFIRMATIVELY, THAT HE/SHE BE ASKED FURTHER QUESTIONS ABOUT THAT KNOWLEDGE OUT OF THE HEARING OF OTHER VENIRE PERSONS.)

2. Familiarity with other venire persons

- a) want everyone to look around at the other jurors in the courtroom to see if there is anyone on the panel whom you know.
- b) Do any of you see anyone you know?
- c) It is possible that you and the person you know may both end up serving as jurors in this case.
- d) Sometimes when we deal with a friend, a coworker, someone we know and like, sometimes in those cases we feel it is easier and better to just get along, to agree, to let things go, to give in, even if we don't think they are right.

- e) That cannot be the way things work on a jury.
- f) Don't get me wrong. It is important that jurors be able to work together to arrive at a verdict.
- g) However, it is also important that each juror feel free to speak and make up his/her own mind about all of the issues in this case. It is essential that a juror feel free to stick by his/her guns if he/she feels strongly about a point.
- h) Each juror must have an independence. Does each of you feel that you could be independent, make your own decision, even if your relative, friend, coworker, whatever, is on the jury? If you do not feel that you could have this independence if your relative/friend/coworker was on the jury please raise your hand.

3. Appointed counsel

It may be mentioned that Michael W. Walker has been appointed by the Court to represent Theodore S. Wiggins. That is because Theodore S. Wiggins was unable to afford to hire an attorney to represent him. Is there anyone who would hold it against Theodore S. Wiggins that he was unable to afford to hire his own attorney?

4. Knowledge regarding witnesses who will testify in the case

- a) The parties are now going to read lists of those persons who may be

called to testify in this case. I have also provided you with lists of those names. If you would, please listen carefully to these names as they are read. If you recognize a name, please immediately raise your hand, and I shall ask you about how it is that you know that person. (It is suggested that lists of witnesses, prepared by counsel prior to trial, are read at this time, and venire persons are recognized as they indicate they know a particular witness.)

- b) (If a venire person indicates knowing a particular witness, the following group of questions will be asked.) How is it that you know (name of witness). It may well be that (name of witness) will testify in this case. If that happens, would you tend to believe (name of witness) more than you would some other witness? Would you favor the side who called (name of witness)? Would you be able to judge the testimony of (name of witness) the same as you would judge the testimony of other witnesses?

5. Familiarity with AUSA's trying case and United States Attorney and her staff

- a) The two Attorneys acting for the government in this case are Brent Venneman and Stacy Sanders. Do any of you know Mr. Venneman or Ms. Sanders?
- b) Beth Phillips is the United States Attorney for the Western District of

Missouri. Do any of you know Ms. Phillips?

- c) There are a large number of attorneys and staff members in the United States Attorney's Office. Do any of you know anyone who works in the United States Attorney's Office?
- d) If there is a response to any of these questions, the follow up questions would be asked to detail the relationship, and to determine whether the relationship would bias the venire person in favor of the government.

6. Testimony by cooperating witnesses

The government will be calling witnesses who are receiving, or hope to receive, some benefit from the government, by way of charge or sentence reductions, in return for their testimony against Theodore Wiggins. You will be instructed about the law concerning the testimony of persons who have received leniency, better treatment, in return for their testimony. Specifically, you will be told that it is up to you to determine how the agreement the witness makes affects the testimony he or she gives. The law does not permit jurors to automatically discount or ignore the testimony of any witness, including those who make such agreements. However, the law does permit jurors to consider the agreements made with the witness, and all of the other facts surrounding the testimony of the witness, in determining whether or not the testimony of the witness should be believed. Would all of you be able to follow the law in

considering the testimony of such witnesses?

7. Presumption of innocence, burden of proof, proof beyond a reasonable doubt

- a) Under our law, a person charged with a crime is presumed to be innocent. When a person is presumed to be innocent, it means that right now, before any evidence is presented, the law considers him innocent, and you must too. Is there anyone who could not follow that principle of the law? Are all of you saying that you are, right now, presuming that Mr. Wiggins is not guilty?
- b) When evidence is presented, the prosecutors will go first. That is because it is up to them to prove that Theodore Wiggins committed the crimes charged. It is not up to Theodore Wiggins to prove he is not guilty. Does anyone think that is unfair or wrong, to make the prosecutors prove their case?
- c) Not only must the prosecutors prove their case, they must convince the 12 of you who serve on the jury and convince you beyond a reasonable doubt.

That means they must make you firmly convinced so a reasonable person would not hesitate to act on that decision. Does anyone think that it is unfair or wrong to make the prosecutors prove their case beyond a reasonable doubt. Could each of you find Theodore Wiggins not guilty if the

prosecutors do not present evidence which firmly convinces you?

That means they must make you firmly convinced so a reasonable person would not hesitate to act on that decision. Does anyone think that it is unfair or wrong to make the prosecutors prove their case beyond a reasonable doubt. Could each of you find Theodore Wiggins not guilty if the prosecutors do not present evidence which firmly convinces you?

8. Testimony by the defendant

- a) Is there anyone who feels that Theodore Wiggins should be required to testify?
- b) The law requires that, if a person on trial does not testify, a jury must ignore that fact, and must not consider it in any way. Put another way, you are to draw no inference of any kind if Theodore Wiggins does not testify. Why? Because, it is not the job of the defense to prove Theodore Wiggins is innocent. It is up to the prosecutors to do the proving in this case, and proving beyond a reasonable doubt.
- c) But some people do draw inferences when people on trial do not testify, they cannot seem to help it. And the inferences are bad. Are there any of you who would think something bad about Theodore Wiggins, that he had something to hide, were he to not

testify. Despite what the law says, would you want and expect Theodore Wiggins to testify, to tell his side of the story?

- d) Putting the shoe on the other foot, were Theodore Wiggins to testify, some might automatically disbelieve him because he is the man on trial. Those people would think, he has too much reason to lie, and those people would not really listen to his testimony and consider it.
- e) In addition, if Theodore Wiggins testifies, you would learn that he has been convicted of possession of controlled substances in the past.
- f) Would any of you believe Theodore Wiggins any less just because he is the person on trial?
- g) Would any of you ignore Theodore Wiggins testimony because he is the person on trial?

9. Testimony by law enforcement officers

There will be law enforcement officers who will testify in this case. Is there anyone who would automatically believe the testimony of a law enforcement officer simply because of his status as a law enforcement officer? Would you consider the testimony of a law enforcement officer in the same manner as all other witnesses?

10. Access to Internet

- a) Please indicate whether, at your home, you have internet access.
- b) Do you regularly do searches concerning issues about which you are curious?
- c) Have any of you ever done internet searches regarding court cases?
- d) Do any of you have a PACER account to allow you to obtain access to records in Federal cases?
- e) Have any of you done any internet searches about this case?

11. As you can see, Theodore Wiggins is of African-American descent. Let's be honest with each other. Some people have racial prejudices. I am not here to judge anyone about how they feel. However, Theodore Wiggins's liberty or freedom is quite literally on the line. He deserves to have 12 jurors who will judge him on the evidence and the law, and to whom his race makes absolutely no difference. Each of you know yourself. I am asking you to be honest and have the courage to say if you have any sort of racial prejudice?

12. Does any member of the panel have any racial prejudice?

Conclusion

WHEREFORE, Mr. Wiggins prays that this Honorable Court sustain his objections to the proposed voir dire of the government, and adopt the procedures and

permit the questioning as proposed by Mr. Wiggins herein.

Respectfully submitted,

/s/ Michael W. Walker
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Proposals were served electronically this 8th day of February, 2012, on the following:

Mr. Brent Venneman, Assistant United States Attorney

/s/ Michael W. Walker
Michael W. Walker