

THE DISTRICT COURT OF TULSA COUNTY
IN AND FOR THE STATE OF OKLAHOMA

DISTRICT COURT
FILED

JUN 12 2017

THE STATE OF OKLAHOMA,)	
Plaintiff,)	
v.)	CF-14-3952
)	
SHANNON JAMES KEPLER,)	The Honorable Sharon Holmes
Defendant.)	

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

**MOTION TO QUASH VENIRE
WITH REQUEST FOR AN EVIDENTIARY HEARING**

Comes now the Defendant, Shannon Kepler, through counsel, and hereby moves this Honorable court to quash the venire in the above-referenced case, for the following reasons, to wit:

1. THAT Mr. Kepler's venire for his jury trial scheduled for June 26, 2017, was summoned May 22, 2017;
2. THAT the selection of the juries in Tulsa County, and all seventy-seven counties in Oklahoma, utilize the electronic jury management system ["JMS"] which is operated by *Courthouse Technologies, Ltd*, ["CHT"] a Canadian company;
3. THAT on June 11, 2015,¹ the Oklahoma Supreme Court issued an Order stating that "the purpose of this order is to **effectuate** the implementation of the electronic jury management system developed by Courthouse Technologies, LTD (CHT) and approved by the Legislature in 38 O.S. Supp. 2015 §18.2." 2015 OK 43 (emphasis added);
4. THAT the "legislature in 38 O.S. Supp 2015 § 18.2" **did not** approve CHT; rather; the statute authorizes each district court to utilize an "**approved** [by the Oklahoma

Supreme Court] electronic jury management system” “**authorized** by the Administrative Director of the Courts for the **random** selection of . . . jurors” (38 O.S. § 18.2(A)) (emphasis added);

5. THAT the June 11, 2015, Order “effectuated” but did not “approve” the JMS developed by CHT,
6. THAT on June 5, 2017, exactly two weeks **after** Mr. Kepler’s venire was summoned, and nearly two years **after** the Oklahoma Supreme Court issued its order “effectuating” the JMS, the Oklahoma Court Administrator, Jari Askins, in response to an inquiry by Mr. Kepler’s attorney, emailed a one paragraph document “authorizing” the Oklahoma JMS and its operation by CHT, and claimed her “authorization” applied “retroactively to any juries selected via the approved system prior to the date of this authorization” (see attached authorization);
7. THAT prior to Ms. Askins’ “retroactive” authorization, Ms. Askins conceded that Oklahoma’s JMS was flawed. Specifically, Ms. Askins sent an email to Oklahoma judges on January 13, 2017, admitting that the state’s electronic jury management system vendor, CHT, incorrectly categorized ZIP codes for some residents in cities such as Tulsa, Broken Arrow, Norman and Skiatook, which have boundaries in more than one county. Ms. Askins informed Oklahoma Judges, “it is possible for a ZIP code not to be represented in the jury panel” and that “this was a reasonable concern in several counties.” She then claimed “the issue, which apparently assigned Osage County Skiatook and Tulsa residents only to Tulsa County, had been resolved as of Jan. 12”;
8. THAT in fact, as demonstrated in Mr. Kepler’s two previous trials, the issue was not

resolved as of January 12, 2017; in both prior jury trials his venire contained citizens from counties other than Tulsa;

9. THAT CHT is a Canadian company located in British Columbia operated by two individuals, President Scott Kerr, and Vice-President John Arntsen, whose credentials are unknown;
10. THAT according to statements made to Mr. Kepler's attorney by a capital trial attorney in Georgia where CHT was found to illegally exclude otherwise qualified jurors, CHT is a sham operation that wrongfully takes U.S. taxpayer money;
11. THAT at a hearing in Georgia, Arntsen testified that he has no degree or college education. He testified that he is "usually locked in a room somewhere" and that Kerr is in charge of communications with "lawyers and things like that" but that Kerr is "not a computer guy." *State v. Carmen, et, al.* 10/31/13 Hg. Tr. V. I., p. 138, Exhibit 1;
12. THAT Arntsen testified he designates the work given by different clients to "someone else to do the physical work." 10/31/13 Hg. Tr. V. I., p. 121;
13. THAT Arntsen testified "I read it [the Court Order] and then hand out the tasks that I -- I think are required to the person in the company that's most suited to do it." 10/31/13 Hg. Tr. V. I., p. 148. Arntsen did not name the "person" and no person is listed anywhere on the company website;
14. THAT Arntsen testified he has done "hundreds of millions of these in three countries" nevertheless, he testified that there are no specifications other than "in his head." 10/31/13 Hg. Tr. V. I., pp. 149, 122;
15. THAT Arntsen testified "specifications are not written down anywhere" "they are in

my head” “and we tell **the person we hire to do something with the data.**” He testified, “ it’s like a carpenter you don’t have to tell a carpenter how to build a wall.” 10/31/13 Hg. Tr. V. I., pp. 122-124;

16. Arnsten testified “the database and the software is how the people who work here delete - sorry - disqualify people, defer people, do all those things.” 10/31/13 Hg. Tr. V. I., pp. 123-24;
17. THAT Arnsten testified that CHT developed a code system to “permanently disqualify jurors.”10/31/13 Hg. Tr. V. I., p. 127;
18. THAT during his testimony, Arnsten acknowledged CHT illegally permanently disqualified thousands of Georgia qualified jurors, stating under oath, “this was our fault,” this was our mistake,” **“that’s our bad.”** 10/31/13 Hg. Tr. V. I., p. 134;
19. THAT in reviewing one Georgia county, the Georgia Supreme Court found CHT wrongfully deleted thousands of eligible juror names, wrongfully inactivated eligible juror names for non-statutory reasons, mistakenly added juror names to the Court Administrator list and permanently disabled thousands of eligible jurors;
20. THAT no testing was done by the county to verify the voracity or manipulations by CHT and the Georgia Supreme Court remanded the cases for a determination of the extent of jury summons statutory violations by this vendor CHT. *Ricks v. State*, May 15, 2017 --- S.E.2d ---- 2017 WL 2061675;
21. THAT neither the Oklahoma Supreme Court generally, nor the Court Administrator Jari Askins specifically, nor the state legislation, nor any county of Oklahoma, has tested the voracity or manipulations by CHT to determine whether the statutory requirements to summon jurors is being violated by CHT;

22. THAT the website of CHT includes a link to a cosmetic company in China; further the website claims CHT saves money by **not** sending out summons and offers refunds to enable Courts to get money back for summons CHT does not issue;²

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<http://apps.ncsc.org/vendorlist/vendordetail.aspx?id=148>

link to Chinese cosmetic advertisement on CHT website . .

<http://ctc8.net/>

CHT, allegedly an international JMS company, has 40 likes on its Facebook page

<https://www.facebook.com/CHTJMS/>

Courthouse technologies has two employees – the two founders

<https://www.glassdoor.com/Salary/Courthouse-Technologies-Salaries-E1045484.htm>

CHT claims every computer in the “system” has access to its JMS

“However, it should be noted; Courthouse Technologies provides a full site-wide license for use on any computer authorized to have access to the jury system in the in your installation. **No individual user licenses!**”

CHT’s website has typographical errors, phraseology and punctuation usage which indicates an amateur endeavor and lack of computing expertise

<http://www.courthouse-technologies.com/AboutUs.asp>

·**Nobody on the planet knows more about jury management that we do. Period.**

http://www.courthouse-technologies.com/Feature_SummonsDirect.asp

Better, Faster, Cheaper

Production and mailing of your juror questionnaires and/or summons documents with SummonsDirect:

1. Is automatic and painless;
2. Eliminates the majority of undeliverable questionnaires and summonses;
3. Improves the accuracy of postal delivery;
4. Continually improves the health of your jury source list;
5. Ensures your documents enter the mail stream faster than if you mail in-house;

23. Accordingly, Mr. Kepler requests an evidentiary hearing, and at the conclusion of the hearing, that the venire be dismissed and a new venire be selected pursuant to the statutory requirements of the state of Oklahoma to preserve his right to a fair trial not compromised by a contaminated venire.

ARGUMENTS AND AUTHORITIES

TITLE 38 SECTION 18.2 AND TITLE 22 SECTION 633 VIOLATE SUBSTANTIVE DUE PROCESS PURSUANT TO THE FIFTH AND FOURTEENTH AMENDMENTS, ARE UNCONSTITUTIONAL AND VOID BECAUSE THEY ATTEMPT TO DEPRIVE CITIZENS OF THE RIGHT TO CHALLENGE THE CONSTITUTIONALITY OF A STATUTE AND ATTEMPT TO USURP THE RIGHT OF THE COURTS TO JUDICIAL REVIEW.

6. Improves juror yield;

7. Reduces the number of questionnaire and summons documents you need to produce; and,

8. Costs less per document than in-house printing and mailing.

It's a no-brainer. But how's it possible?

When you use SummonsDirect, you qualify for Automated First Class Pre-sort postage -- typically \$0.38 per piece. If you're **not** using SummonsDirect, you're probably paying closer to \$0.50 per piece.

When you use SummonsDirect your jury questionnaire and/or summons data is automatically run against the National Change of Address registry (NCOA) in real time at regular intervals (daily, weekly, or monthly depending on volume and desired run frequency). If you're printing and mailing in-house and your juror questionnaire or summons data is **not** run against the National Change of Address Registry (NCOA) at least every 90 days, the USPS may charge you an additional \$0.07 per piece postage.

SummonsDirect employs integrated logic to analyze the NCOA return codes for juror eligibility and deliverability **before** questionnaire or summons documents are produced. **This means that you only incur production costs for jurors who are eligible to serve and whose address is deliverable. Mailing services that use Fast Forward don't do this!!!!** They produce the document and simply forward it, whether the juror is **eligible** to serve or not.

With SummonsDirect your documents are CASS certified for more accurate document delivery. CASS is a system which improves the accuracy of carrier route, adds or updates five-digit zip codes and zip +4, and adds delivery point codes that appear on each document.

Shannon Kepler has a fundamental due process right to a fair jury properly selected pursuant to the United States and Oklahoma constitutions and the statutes of this state. The venire selected on May 22, 2017, by an unapproved, unvetted Canadian company, and two weeks prior to statutorily required authorization, fails to comply under any legal standard and must be stricken. In its electronic jury management statute, the Oklahoma legislature claims) that “[u]se of an electronic jury management system shall not be grounds for a challenge to a panel based on a material departure or irregularity.” 22 O.S. Supp. 2015 § 633(A) See also 38 O.S. § 18.2(G).³ This assertion is unlawful.

In *Marberry v. Madison*, 5 U.S. 137, 2 L. Ed. 60, 1 Cranch 137 (1803), the Court held that , "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded, " emphasizing, “that every right, when withheld, must have a remedy, and every injury its proper redress.” The Court emphasized further, “[t]he government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.” *Id.* (stating laws cannot “sport away vested rights”). See also *Miranda v. Arizona*, 384 U. S. 436, 437, 86 S. Ct. 1602, 16 L. Ed. 2d. 694 (1966) (holding that while Congress had the power to prescribe rules of evidence and procedure, Congress “may not legislatively supersede our decisions interpreting and applying the Constitution”);

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G. “Use of an approved electronic JMS shall not be grounds for a challenge to a juror or a panel based on a material departure or irregularity from the requirements prescribed by law”.

Dickerson v. United States, 530 U.S. 428, 120 S. Ct. 2326; 147 L. Ed. 2d 405 (2000). Likewise, the Oklahoma Constitution mandates obedience to clear legislative intent and respect for "accrued rights" acquired through past adjudications. See Art. 5, § 54, Okl. Const. (cited in *Griffith v. Griffith*, 1986 OK 81, ¶ 5, 730 P.2d 524).

For instance, in *Pope v. State*, 1964 OK CR 116, 397 P.2d 513, the defendant moved to quash the jury panel because the juror names in the box were not folded as statutorily required. *Id.* at ¶ 1 (citing 22 O.S. § 593). The trial court summarily dismissed the defendant's motion and refused to hear evidence. *Id.* at ¶ 2. The Court found the trial court's refusal was error that required reversal, holding that "the selection of a fair and impartial jury is a **fundamental right** of the defendant." *Id.* at ¶ 3 (emphasis added). The Court explained:

It is of the utmost importance that court officials should be held to the strict observance of the provisions of law prescribing their procedure and duties, and their conduct should be such that **no possible suspicion can attach to them of having acted in a manner prejudicial to the accused, or in his favor**. Courts cannot be too strict in compelling a rigid and **vigilant observance of the provisions of the statutes designed to preserve inviolate the right of trial by jury and the purity of jury trials**.

Id. at ¶ 4 (citing *Grant v. State*, 11 Okl.Cr. 396, 146 P. 919 (1915) (emphasis added)). Thus, since statehood, the random selection of jurors has always been rigorously guarded and dutifully effectuated by sworn court officers.

For example, in *Moore v. State*, 1987 OK CR 68 ¶16, 736 P.2d 161, the Court articulated the constitutional principle that criminal defendants are entitled to juries drawn from a fair cross-section of the community. When underrepresentation of

venires of distinctive groups in the community is due to their systematic exclusion, a defendant's Sixth Amendment rights are infringed (citing *In Taylor v. Louisiana*, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975). See also *Ricks v. State*, ---- S.E.2d ---- (2017), 2017 WL 2061675. In *Ricks*, the Georgia Supreme Court held that CHT violated this constitutional principle by unlawfully deleting thousand of names it claimed were “duplicates” but were in fact qualified jurors. In just one instance of unlawful exclusion, the Georgia expert witness testified CHT improperly eliminated female qualified jurors because CHT labeled them “duplicates” if they had gotten married and changed their names. 10/31/13 Hg. pp. 218-129.

Similarly, in the present case, Mr. Kepler’s rights to due process and a random jury is at the mercy of this same, unvetted, untested, and unsupervised foreign outfit, CHT, who permanently deletes otherwise qualified jurors for the purpose of saving “clients” money as admitted under oath by CHT’s vice-president, a man with inadequate education, no written specifications, and no understanding of the legal ramifications of his outfit’s disregard for the rights established by the United States and Oklahoma constitutions.

Likewise, under this new secret system the jurors arrive in the courtroom with predesignated numbers and there is no random number assignment in the presence of the accused which is the bedrock of random jury selection. In *Pope* the case was reversed without prejudice because the bailiff may have been able to read the jurors names. Currently, as per the Tulsa County Court Administrator, either known or

unknown persons can tinker with the computer to select a certain demographic jury for a particular case.

Passing judgment on our fellow citizens requires that the process is not only fair, but that it appears fair. The solemnity dedicated to the process instills credibility in the outcome. Mr. Kepler, and others, are on trial for the remainder of their life. As such, his fate and freedom should not be determined by this unvetted, unauthorized, unapproved and unlawful foreign entity secretly selecting the person who will decide his fate.

THE OKLAHOMA SUPREME COURT VIOLATED THE STATUTORY REQUIREMENT THAT THE OKLAHOMA JMS BE APPROVED AND AUTHORIZED PRIOR TO IMPLEMENTATION AND THE COURT ADMINISTRATOR'S ONE PAGE RETROACTIVE "AUTHORIZATION" TWO (2) YEARS AFTER THE FACT REVEALS HEEDLESSNESS TOWARDS HER RESPONSIBILITIES, DISREGARD FOR THE RIGHTS OF LITIGANTS AND DEPRIVES MR. KEPLER OF A FAIR TRIAL AND RELIABLE VERDICT.

In spite of a statute that purports to eliminate judicial review, *albiet* unlawfully, the Oklahoma Supreme Court and Court Administrator violated the clear mandate of title 38 section 18.2, by failing to meaningfully "approve" CHT, failing to provide prior "authorization" of CHT, and falsely claiming the statute itself approved CHT, when in fact the statute only sets forth the requirements for JMS. Accordingly, the Oklahoma Supreme Court and Court Administrator's failure to comply render Mr. Kepler's venire fatally flawed.

The litigants of Oklahoma are entitled to a Court Administrator who understands the gravity of her responsibilities and discharges them thoughtfully and faithfully, not "retroactively" authorizing a system which she herself acknowledged was unsound. Furthermore, the litigants of Oklahoma are entitled to a Supreme Court who does not recklessly approve an entity charged with statutory compliance of juror selection without

investigating or vetting or determining whether the foreign entity utilized is in fact unqualified, unlawful and illegitimate.

“The very act of ‘approval’ imports the act of passing judgment, the use of discretion, and the determination as a deduction therefrom unless limited by the context of the statute.” *Melton v. Cherokee Oil & Gas Co.*, 1917 OK 67, ¶¶ 22-24, 170 P. 691 (citations omitted). In *Melton*, the Court explained that “the word ‘approve’ is to regard or pronounce as good; think or judge well of; admit the propriety or excellence of; be pleased with: commend.” *Id.* Thus, “approval” by a court involves an “affirmative, considerate approval of the mind and conscience” *Yarnell v. Kilgore*, 1905 OK 94, ¶ 5, 82 P 990.

Similarly, in *Rawls v. State*, 1948 OK CR 17, 190 P.2d 159, 86 Okl.Cr. 119, 133-34, the Court determined that the meaning of “discretion” “does not mean that it may be granted or refused at the mere will or pleasure of the judge, but that he is to exercise a sound judicial judgment.” The Court noted:

Whatever may have been the construction of this important statute heretofore, it is now evidently unwise longer to keep so indispensable a right as that of a fair and impartial trial, in a criminal case, under the uncertain security of a power so uncontrollable and liable to error as mere judicial discretion a power that may possibly be misdirected by a fit of temporary sickness, an extra mint julep, or the smell or looks of a peculiar overcoat, or things more trivial than these, which may imperil the due course of justice in the administration of the law.

Id.

Additionally, when the plain and ordinary language of a statute is unambiguous, resort to additional rules of construction is unnecessary. *Barnard v. State*, 2005 OK CR 13, ¶ 7, 119 P.3d 203, 205–06. In this instance the plain words of the statute are “that the district court may utilize an approved electronic jury management system (JMS) authorized

by the Administrative Director of the Courts for the random selection” 38 O.S. Supp. 2015 §18.2(A). Thus, the authorization of the JMS by the Supreme Court Administrator is a condition precedent to the Tulsa Court Clerk using the JMS as per the plain language of the statute. Mr. Kepler’s venire were selected by an unauthorized process. He has timely and correctly raised this motion prior to the swearing of the jury. The venire shou

If forced to trial in the present case, Mr. Kepler’s right to a fair and impartial trial is similarly being determined by an unapproved, unknown, unvetted, uncertain untested, and uncontrollable foreign entity not only liable to unlawful error, but admittedly guilty of unlawful error. The only process provided by the Court Administrator was a statutorily infirm one paragraph administrative statement two (2) years after the fact purporting to retroactively authorize a foreign entity who admitted under oath that it illegally and permanently removes jurors and of which the Administrator herself admitted injected error into the system. Nevertheless, the Court Administrator presumes to retroactively “authorize” that error as well.

Similarly, the Oklahoma Supreme Court abandoned its duty to “affirmative, considerate approval of the mind and conscience” of foreign entity CHT; rather, the Court falsely implied that the state legislature approved CHT when in fact it approved only the JMS. Neither the Court Administrator nor the Oklahoma Supreme Court, nor the Legislature, has reviewed CHT’s specifications because CHT’s VP testified there are no specifications - they are “in his head.”

From top to bottom this process is infirm and the actors have been careless. The JMS statute is void of any reasoned judgment and is being applied to Mr. Kepler contrary to its pain language. The JMS statute does not approve CHT. It does not describe any

investigation or due diligence to be performed prior to approval of CHT. It does not mandate any quality control on CHT's methodology or even outline basic instructions upon which CHT must rely. CHT's admissions against interest under oath demand the reasonable conclusion that, as in Georgia, CHT is ineffectual, that its actions of permanently deleting qualified jurors is unlawful, and that it is likely fraudulent.⁴

WHEREFORE, premises considered, Shannon Kepler prays for an evidentiary hearing on this matter, at the conclusion of which, this Court quashes the venire, prohibits CHT involvement in selecting the venire until it has been vetted and found to comply with the law, and orders a randomly selected venire consistent with Oklahoma statutes and the Oklahoma and United States constitution.

SIGNATURE AND CERTIFICATE OF COUNSEL

- ◆ By my signature below, I swear or affirm under penalty of perjury that: the facts alleged in these motions are true and correct to the best of my knowledge and belief; and,
- ◆ these matters are raised in good faith, in the interests of justice, and not for the purposes of delay.

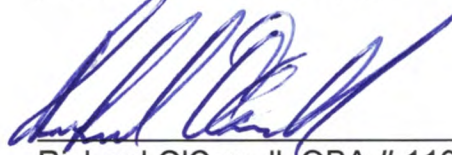
4

Emily Gilbert, an capital trial attorney involved in the Georgia litigation, informed the undersigned that CHT is a sham operation taking money from U.S. citizens and that the judge determined that Georgia would withhold payment from CHT until its President stopped avoiding a subpoena and appeared to testify under oath about its unlawful handling of the jury pool.

Respectfully submitted to the Court and delivered to:

The District Attorney
Courthouse
500 S. Denver
Tulsa, Ok

As of June 12 , 2017, by



Richard O'Carroll, OBA # 11947

O'Carroll & O'Carroll

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Tulsa, OK 74127

918-584-4192

troc@cox.net

ATTORNEY FOR SHANNON KEPLER

EXHIBIT ONE

PORTIONS OF TESTIMONY IN GEORGIA

1 IN THE SUPERIOR COURT OF FULTON COUNTY

2 STATE OF GEORGIA

3
4
5 STATE OF GEORGIA

6 VS.

) Indictment Nos.

7 DEMARIO CARMAN

) 12SC115140

8 OTIS RICKS

) 12SC115140

9 GREGORY FAVORS

) 11SC98169

10 CHRISTOPHER M. ERDMAN

) 11SC103950

11 JOSEPH SMITH

) 12SC116037

12 OMAR ANDREW PITTS

) 10SC94897

13 CHARMON SINKFIELD

) 09SC82956

14 TRANSCRIPT OF TRAVERSE JURY CHALLENGE HEARD BEFORE THE
15 HONORABLE CONSTANCE RUSSELL, ATLANTA JUDICIAL CIRCUIT,
16 OCTOBER 31, 2013.
17 VOLUME 1 OF 3
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19
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24
25

TINA D. HARRIS, CCR-B-2128
OFFICIAL COURT REPORTER
SUPERIOR COURT OF FULTON COUNTY
SUITE T-1858, JUSTICE CENTER TOWER
ATLANTA, GEORGIA 30303

1
2
3 APPEARANCES OF COUNSEL:

4
5 FOR THE STATE:

6 CHRISTOPHER QUINN
7 LENNY KRICK
8 SHEILA GALLOW

9 FOR DEFENDANTS CARMAN, SMITH, SINKFIELD:

10 CHRISTIAN LAMAR
11 KIMBERLY STATEN-HAYES
12 KEITH ADAMS

13 FOR DEFENDANTS FAVORS, RICKS:

14 EMILY GILBERT
15 BRAD GARDNER

16 FOR DEFENDANT ERDMAN:

17 JIMMY BERRY
18 MAZIE LYNN CAUSEY

19 FOR DEFENDANT PITTS:

20 CHRISTIAN LAMAR
21 CAROL CAMP
22 GLADYS POLLARD
23
24
25

I N D E X

WITNESSES

ALL WITNESSES:

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Phenix Ayers-Gaston for Defendant:

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Direct Examination by Ms. Gilbert 15:17

Direct Examination by Mr. Berry 16:5

Cross-Examination by Mr. Quinn 17:1

Redirect Examination by Mr. Lamar 39:11

Redirect Examination by Ms. Gilbert 43:20

Redirect Examination by Mr. Berry 45:3

Yolanda Lewis for Defendant:

Direct Examination by Mr. Lamar 49:10

Direct Examination by Ms. Gilbert 54:19

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Doctor John C. Speir for Defendant:

Direct Examination by Mr. Lamar 73:21

Michael Holiman for Defendant:

Direct Examination by Mr. Lamar 85:3

Cross-Examination by Mr. Quinn 93:20

Redirect Examination by Mr. Lamar 106:16

Paul Arntsen for Defendant:

Direct Examination by Mr. Lamar 109:17

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Jeffrey Martin for Defendant:

Direct Examination by Mr. Lamar 168:22

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Ms. Ayers-Gaston for Defendant:

Further Redirect Examination by Ms. Gilbert

Further Cross-Examination by Mr. Quinn 236:15

Further Redirect Examination by Ms. Gilbert 237:13

EXHIBITS

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1 Q. What were the sources that you used other than the
2 -- you had the list; is that correct?

3 A. Yes.

4 Q. All right. Were there any other sources of data
5 that you used to create the list for Fulton County as directed
6 by Fulton County?

7 A. Yes, the extract, as I mentioned before.

8 Q. And -- and again, I'm not as learned in terms of
9 this process as you are.

10 MR. LAMAR: I'm sorry, Judge. This question may
11 sound a little crazy, but I guess I'm asking --

12 BY MR. LAMAR:

13 Q. I know you got the extract.

14 A. Right.

15 Q. But were there other processes that you used to
16 come up with your final product as directed by Fulton County?

17 A. Well, yeah.

18 Q. Could you explain?

19 A. Well, we used SQL server statements to gather
20 counts on duplicates. We used dBase to examine the files. We
21 used dBase to run certain processes.

22 Q. Okay. And I'm going to ask you just if you could
23 just in terms of when you say dBase, could you just explain
24 that?

25 A. Yeah, dBase is a product that has been around for a

1 long time, dBase 2, dBase 3, dBase 4. And what -- what it is
2 is a program that allows you to manipulate or create databases,
3 tables, create indexes, write small programs that loop through
4 all the records in a file, things like that.

5 Q. Thank you. Now as far as any written instructions
6 and specifications that you use, these were -- those written
7 instructions and specifications were given to you by Fulton
8 County; is that right?

9 A. Yeah. They gave me an administrative order.

10 Q. And so you -- I asked you earlier had you reviewed
11 the Georgia Supreme Court Rule. So they did not give you that?

12 A. I didn't see it.

13 Q. Have you had a chance to look at it since then?

14 A. No.

15 Q. Now when I asked you about specifications you
16 talked about dBase, you talked about SQL, I believe?

17 A. Yeah.

18 Q. All right. Now are these specifications written
19 down anywhere?

20 A. No.

21 Q. Okay. Are these specifications in your head?

22 A. Well, the people that -- yeah, in my head, but also
23 the people we hired. We hired a computer scientist. And you
24 tell them to do something with the data. If they need an
25 instruction on how to do it, then they're not a computer

1 scientist. It's similar to a carpenter. You don't have to
2 tell the carpenter how to build a wall. You tell them you want
3 a wall and he knows it's two plates on top, one on the bottom
4 and studs in the middle. And you don't have -- you don't have
5 to tell him how to build a window. Because if he doesn't know
6 how to do that, then he's not a carpenter. The same thing with
7 programming.

8 Q. I understand. This question: You -- you have a
9 contract with Fulton County?

10 A. Yes.

11 Q. And you're directed by Fulton County to perform
12 certain services; is that correct?

13 A. That's correct.

14 Q. And it's specific to the -- the jury list -- the
15 creation of the traverse jury list and the grand jury list; is
16 that correct?

17 A. Yes.

18 Q. Okay. This question is since you-all do that, what
19 would happen in terms of Fulton County's grand jury list if
20 you-all -- and I'm not talking about if they contracted with
21 another vendor -- but if you-all did not perform this service,
22 what would happen with the jury list of Fulton County?

23 A. They wouldn't have a jury. They wouldn't be able
24 to call jurors. Because the jury list -- you're talking about
25 lists, but it's actually a database. And the software acts as

1 the database and the software is how the people that work here
2 delete -- sorry -- disqualify people, defer people, do all
3 those things. And so when you talk about a list, it's not like
4 a list.

5 Q. I see.

6 A. It's a database that is logically developed and
7 designed to meet the needs of the business that we're doing,
8 which is jury management.

9 Q. I see. Another technical term that I've come to
10 understand, did you supply at the instruction -- no. Did you
11 supply a one-to-one match of the Council of Superior Court
12 Clerks' jury list to the one used by Fulton County once Fulton
13 County gave you that list?

14 A. Did we provide a list? I'm not sure.

15 Q. Okay, a one-to-one match.

16 A. Well, you have -- this is the thing with an extract
17 of however many it was. As I said -- go back to my notes. If
18 you have an extract of --

19 THE COURT: Excuse me.

20 A. You have -- sure.

21 THE COURT: Okay. Fulton County gives you a master
22 list?

23 THE WITNESS: Right.

24 THE COURT: That they get from the Superior Court
25 Clerk's Council.

1 A. Okay.

2 Q. -- that pertain to those specifications --

3 A. Right.

4 Q. -- and instructions.

5 A. Right.

6 Q. One: How are the -- and I guess the long word is
7 permanent disqualification codes generated or perm, underline
8 -- I mean -- I'm sorry, dash, disq, P-E-R-M, dash, D-I-S-Q.
9 How are those codes generated?

10 A. I don't know for sure.

11 Q. Okay. How are the perm -- permanent
12 disqualification codes generated?

13 A. The permanent disqualifications codes are created
14 by the Fulton County staff. And they enter all of the
15 different reasons for excusals, disqualifications, deferrals.
16 And as well there's a -- there's a flag against each reason
17 that can be set as permanent. An example being the easiest one
18 is death. Well, then it's permanent. There's other reasons
19 that are also permanent. But that's up to the -- that's up to
20 -- to -- we have no say in that.

21 Q. That's up to Fulton County.

22 A. Yeah. They can have any reason. I don't know --
23 if you go around the country and around the world you see
24 there's all kinds of different reasons for people getting
25 excused and deferred and disqualified.

1 on that jury list who is logically eligible to receive a
2 summons that's not on the 2013 jury list that was received from
3 the --

4 A. Yes.

5 Q. -- Superior Court Clerks --

6 A. There is 1,085 records exactly. And of those 1,085
7 records what happened is when we send a file to the NCOA, all
8 of our clients except for Fulton County don't -- how would I
9 put this -- there -- they don't try to supplant their list
10 every year. In other words, they -- they -- they just want to
11 have their list grow organically. Where here, we're -- we're
12 sure -- we have to be sure that everyone that's on the 2013
13 list is available for selection. And so what happened was that
14 when they saw in the case of the records like this that had a
15 wrong address and were marked as yes, they took the mark out
16 and changed the address. And there's 1,085 of those exactly.

17 Q. And that's what Courthouse Technologies did?

18 A. Yes. That's our bad. We can rectify that, you
19 know, in a few minutes. But we have to wait for direction from
20 our client.

21 THE COURT: Okay. Let me ask you to start over so
22 that I'm clear about what you just said. What is NCOA?

23 THE WITNESS: Oh, sorry. It's the National Center
24 for the Address Change that the United States Postal
25 Service uses to make sure that they're not having

1 Gilbert. I'm here on behalf of two of these defendants other
2 than Mr. Lamar's clients.

3 who is Scott Kerr?

4 A. He's the president of Courthouse Technologies.

5 Q. Okay. Are you aware that Mr. Kerr was put forth as
6 the person that we as a defense team should contact regarding
7 the work done on the Fulton County list?

8 A. I'm aware of that.

9 Q. Okay. Was that done at your direction?

10 A. I don't understand the question.

11 Q. Was he put forward as the representative that would
12 be appropriate to speak to at your direction?

13 A. Well, no. It didn't happen like that. He's the
14 contact person for Fulton County. He's the president of the
15 company. So any -- any communications in this regard with
16 lawyers and things like that, he does that in our company. I'm
17 usually locked in a room somewhere. So this is really rare for
18 me to be out here, even in a suit, so. But when it came down
19 to that I have -- you know, we have to answer, who better, not
20 him. I mean, he knows a lot, but he's not a computer guy
21 really.

22 Q. Okay. So -- so really -- I mean, is it fair to say
23 that it's been 11 months ago when this process started you
24 probably would have been the better person to speak to
25 regarding the actual work done on the Fulton County list?

1 otherwise you're going to have --

2 A. Yep.

3 Q. Something that looks like --

4 A. Right, exactly. We have a blueprint.

5 Q. -- you know, the Great Wall of China. So what's
6 the blueprint?

7 A. This one right here, administrative order. That's
8 our blueprint.

9 Q. Okay. So you hand --

10 A. We follow this -- we follow this, we can't go
11 wrong.

12 Q. So you hand that to your computer scientist and say
13 follow this?

14 A. No, I don't.

15 Q. Okay. Well, what -- what --

16 A. I read it and then hand out the tasks that I -- I
17 think are required to the person in the company that's most
18 suited to do it.

19 Q. Okay. What are those?

20 A. Pardon me?

21 Q. What are those?

22 A. What are what?

23 Q. That you just said that you hand out to the people.
24 What's that information that you hand out?

25 A. Well, I have a conversation with them. I might

1 send them a memo or a -- or whatever, but usually in our
2 meetings when we get a task to do or a project, then we meet
3 and we go over whatever specifications that we have. In some
4 cases there isn't one. In this case we've got this. So then
5 we go over it piece by piece and designate out what has to be
6 done. But what you're -- what you're not also remembering is
7 that I have done hundreds of millions of these in three
8 countries. So it's not like it's something that I have to
9 think about even. It's all up here. So I can say, okay, do a
10 match on this and that and they understand. And they've worked
11 there for -- some of them I've -- worked with me over 18 years.

12 Q. I understand you've done it a lot, but I haven't.
13 So that's why I'm trying to get you to explain to me --

14 A. Well, I've just explained it.

15 Q. So that's all you're going to explain --

16 A. That's all I've got.

17 Q. -- that's all the questions I have.

18 THE COURT: All right.

19 CROSS-EXAMINATION

20 BY MR. QUINN:

21 Q. How are you doing, Mr. Arntsen?

22 A. Good.

23 Q. Kind of start off where Mr. Berry finished. This
24 algorithm that is a random selector --

25 A. Random number generator.

1 two?

2 A. Correct.

3 Q. But we've determined that that can be corrected; is
4 that right?

5 A. What can be corrected?

6 Q. That those people can be taken off the list?

7 A. Oh, yes. You can -- you can, you know, delete
8 anybody you want to delete.

9 Q. That that can be fixed --

10 A. Right.

11 Q. -- is basically my question.

12 A. Right.

13 Q. And have you worked with all the defense counsels
14 on each of these cases that are before the Court today?

15 A. I believe so.

16 Q. And have any of their juries been summonsed yet;
17 have any of the summonses gone out in any of their cases?

18 A. I don't specifically know that, but it sounds like
19 not.

20 Q. Okay. Now I'd like to move back to No. 2, Defense
21 Exhibit 2. This was the list of names deleted from the state
22 file.

23 A. Right.

24 Q. Okay. I want to ask you a couple of questions
25 about that. So if you could get that in front of you for a

1 second.

2 A. Yeah.

3 Q. You got it?

4 A. Yeah.

5 Q. Okay, great. You talked the about the first name
6 on the name -- on the list, Melanie Dawn Palmeri versus Melanie
7 Dawn Reese; is that right?

8 A. Correct.

9 Q. And you said, well, that could possibly --
10 realistically could be a woman who got married?

11 A. Could be.

12 Q. Okay. What about Ananka Follett Dixon and Ananka
13 Follett, dash, Dixon? Could that be a woman who got married?

14 A. Absolutely could be.

15 Q. What about Candice Bucklen Jones and Candice Yvonne
16 Jones. Could that be someone who got married?

17 A. Could be.

18 Q. What about Camille Rosemary Hestick and Camille
19 Rosemary Ferrier. Could that be somebody who got married?

20 A. Could be. I didn't research any of these folks,
21 you know, specifically.

22 Q. Okay. And you said that they were deleted?

23 A. Correct.

24 Q. And what you were talking about is -- let's say you
25 have Melanie Dawn Palmeri and Melanie Dawn Reese and now you're