

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No.2020-K-00878

VS.

DONALD GERMANY

IN RE: State of Louisiana - Applicant Plaintiff; Applying For Writ Of Certiorari,
Parish of East Baton Rouge, 19th Judicial District Court Number(s) 09-16-0105, 1st
Circuit Court of Appeal, Number(s) 2019-KW-0124;

November 04, 2020

Writ application granted. See per curiam.

JDH

BJJ

JLW

SJC

JTG

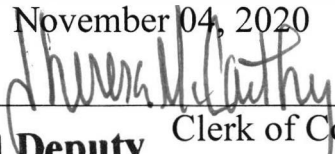
WJC

JHB

Hughes, J., additionally concurs and assigns reasons.

Supreme Court of Louisiana

November 04, 2020



Second Deputy Clerk of Court
For the Court

11/04/20

SUPREME COURT OF LOUISIANA

No. 2020-K-00878

STATE OF LOUISIANA

versus

DONALD GERMANY

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF EAST BATON ROUGE**

PER CURIAM:

Defendant was indicted in East Baton Rouge on September 7, 2016, for second degree murder in the strangling death of his wife. Defendant filed a motion to quash the indictment, contending that the pool from which grand jurors was chosen suffered from the same technological defect as the venire in *State v. Cannon*, 19-0590 (La. 4/18/19), 267 So.3d 585 (per curiam). In *Cannon*, this court quashed the venire during selection of the petit jury in a first degree murder prosecution in which the State was seeking the death penalty. This court found that “under the system employed in East Baton Rouge Parish, persons born after June 2, 1993, otherwise qualified to serve on the jury, were never given an opportunity to serve, because their names were excluded from the general venire as a result of a significant error in the process by which the general venire was composed.” *Cannon*, 19-0590, p. 1, 267 So.3d at 585–586. Likewise, defendant here contends persons born after June 2, 1993, otherwise qualified to serve as grand jurors were excluded by technical error from the pool from which the grand jury that indicted him was drawn.

As noted by a concurrence, the ruling in *State v. Cannon* was necessitated by unique circumstances and was issued out of an abundance of caution:

Given the unique posture and circumstances of this case, I agree that commencing jury selection from a newly-constituted venire is prudent, both out of an abundance of caution and to prevent a possible waste of judicial resources. Notwithstanding, this court, in my view, has not been directed to any constitutional provision or jurisprudence, whether federal or state, that would mandate quashing the general jury venire because of a software glitch that unintentionally excluded potential jurors born after June 2, 1993, and I withhold my judgment on that issue.

Cannon, 19-0590, p. 1, 267 So.3d at 587 (Guidry, J., concurring). The circumstances here are quite different from those presented in *Cannon*. In addition, because the technical problem in East Baton Rouge Parish has since been addressed, the present defendant will be tried by a jury chosen from a venire that was assembled free from error, and that will not exclude persons born after June 2, 1993. Therefore, the district court correctly denied defendant's motion to quash.

After the district court denied the motion to quash, the court of appeal granted defendant's application for supervisory writs and remanded with instructions to the trial court to conduct an in camera inspection of the grand jury venire composition. *State v. Germany*, 20-0124 (La. App. 1 Cir. 6/11/20) (unpub'd). The court of appeal further directed the district court, if it finds that persons otherwise qualified to serve on the jury were excluded from the grand jury venire because of a significant error, to give defendant an opportunity to demonstrate that the exclusion caused irreparable injury, citing *State v. Anderson*, 315 So.2d 266, 267 (La. 1975). The court of appeal erred.

In *Anderson*, the defendant's constitutional right to be indicted and tried by juries chosen from a fair cross-section of the community was implicated. Here, however, defendant has not shown a fair cross-section violation. "In order to establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2)

that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.” *Duren v. Missouri*, 439 U.S. 357, 364, 99 S.Ct. 664, 668, 58 L.Ed.2d 579 (1979). Courts have found that various age spans of young persons are not distinctive groups for purposes of a fair cross-section analysis. *See Ford v. Seabold*, 841 F.2d 677 (6th Cir. 1988) (ages 18–29); *Cox v. Montgomery*, 718 F.2d 1036 (11th Cir. 1983) (ages 18–30); *United States v. Olson*, 473 F.2d 686 (8th Cir. 1973); *United States v. Ross*, 468 F.2d 1213 (9th Cir. 1972) (ages 21–24); *see also State v. Taylor*, 303 So.2d 169, 171 (La. 1974) (“We do not believe that this arbitrarily defined group is ‘cognizable’ and that its exclusion would prejudice the defendant. In reaching this conclusion, we are in agreement with the federal and state courts that have confronted this issue.”).

Accordingly, we reverse the ruling of the court of appeal. We reinstate the ruling of the district court, which denied defendant’s motion to quash the indictment. We remand to the district court for further proceedings.

REVERSED AND REMANDED