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# CITING EVIDENCE OF IMPROPER DISCRIMINATION IN JURY SELECTION BY AN ADA IN THE 1990s, QUEENS DISTRICT ATTORNEY FILES JOINT MOTION WITH DEFENSE TO REVERSE TWO CONVICTIONS

(**Note:** *A hearing on this motion will be livestream-ed today at 2:30 p.m:* http://wowza.nycourts.gov/VirtualCourt/st-qnsupcr.php?room=st-qnsupcr1, *password = 8383*)

Citing decades-old evidence of improper discrimination based on race, sex, religion, and ethnicity in jury selection, Queens District Attorney Melinda Katz announced today that she has filed a joint motion with the defense counsel at the law firm Covington & Burling, LLP, to vacate the convictions of Santiago Valdez and Paul Morant. Both men were convicted in 1996 and remain incarcerated. Upon reversal of their convictions, the District Attorney is requesting the defendants be remanded to pretrial detention and re-prosecuted on the pending indictments.

This motion is based on documents found in the Queens County District Attorney's files indicating that a single ADA—who resigned from the QCDA's office in 1997—improperly excluded certain minorities and women from jury service in violation of the United States Supreme Court's ruling in *Batson v. Kentucky*, 476 U.S. 79 (1986).

"Although the evidence of discrimination in jury selection does not raise any question about the defendants' guilt, the law is clear. A conviction obtained through these discriminatory practices cannot be permitted to stand." said DA Katz. "We will not tolerate discrimination based on race, sex, religion, or national origin." ***(Complete statement by DA Katz begins on page 3.)***

When selecting jurors in criminal trials, both the prosecution and defense are afforded a limited number of "peremptory strikes," which allow an attorney discretion to remove potential jurors from the jury pool. However, the rights of the potential jurors and a criminal defendant under the Equal Protection Clause of the United States Constitution are violated where the use of peremptory strikes is motivated by race, sex, religion, or ethnicity.

Earlier this year, the QCDA's Conviction Integrity Unit was made aware of a set of notes utilized by a single former ADA when exercising peremptory strikes which contained discriminatory guidance including:

- A preference for white jurors;
- Advice to exclude black jurors from certain neighborhoods,
- Advice to exclude Jews, Hispanics, and Italians from jury service, and
- Advice to exclude mothers and grandmothers.

Photocopied versions of these notes were found, in response to a Freedom of Information request, in the case files of both defendants. Other notations in the files of the two defendants showed that the ADA was actively referring to the discriminatory notes when exercising peremptory strikes.

Accordingly, DA Katz has made the difficult decision to consent to reversing, and to return to a trial posture, the following convictions:

- *People v. Santiago Valdez*, Ind.#5477/95: Valdez was convicted of two counts of Murder in the Second Degree (N.Y. Penal Law § 125.25[2]) and one count of Criminal Possession of a Weapon in the Third Degree (N.Y. Penal Law § 265.02[4]). On November 18, 1996, he was sentenced to two consecutive indeterminate prison terms of twenty years to life on the murder convictions, and a concurrent indeterminate term of two and one-third to seven years on the weapon-possession conviction. These convictions related to the murder of Danny Velez and Arley Zapata, who were patrons of a nightclub. The trial evidence showed defendant fired a handgun into the closed door of a nightclub, resulting in the tragic deaths of Mr. Velez and Mr. Zapata. The defendant was identified by eyewitnesses to the shooting and the murder weapon was found in the defendant's apartment.

- *People v. Paul Morant*, Ind.#4904/95: Morant was convicted of Attempted Murder in the First Degree (N.Y. Penal Law §§ 110.00, 125.27[1][a][i]), Attempted Aggravated Assault upon a Police Officer (N.Y. Penal Law §§ 110.00, 120.11), Assault in the Second Degree (N.Y. Penal Law § 120.05), Criminal Possession of a Weapon in the Second Degree (N.Y. Penal Law § 265.03), and Criminal Possession of a Weapon in the Third Degree (N.Y. Penal Law § 265.02[4]). On July 24, 1996, the defendant was sentenced, as a persistent violent felony offender, to concurrent indeterminate prison terms of from twenty-five years to life on each count for which he was convicted. These convictions related to an altercation in which the trial evidence showed Morant struggled with NYPD Officer Keith Schweers during a stop, pulled a gun and shot Officer Schweers twice in the chest. Officer Schweers was saved by his bullet-proof vest, and Morant was apprehended at the scene.

"Our office does not seek to overturn a conviction lightly, and we acknowledge the emotional pain revisiting these cases will cause for Officer Schweers and the families of Mr. Velez and Mr. Zapata. However, the unconstitutional exclusion of qualified jurors based on race, religion, ethnicity or sex imposes real harm to our community and diminishes confidence in our system of justice," said DA Katz.

"We are also committed to ensuring that those who commit heinous crimes do not escape the consequences of their actions," the District Attorney continued. "No infirmity in the evidence at trial has been discovered and the crimes committed continue to warrant vigorous prosecution."

In addition to the action taken today:

*DA Katz instructed the CIU to review every case tried by this former ADA. That review is ongoing, and the CIU is working in collaboration with lawyers at Covington & Burling, LLP, to examine a total of 8 additional cases tried by this ADA to a guilty verdict. None of these defendants remains incarcerated on the charges for which they were convicted.

*The CIU has also conducted an audit of trial files from every ADA who worked at the same time in the same QCDA bureau as the former ADA. In a review of more than 50 jury trials throughout the 1990s, the CIU has not uncovered these notes in any other ADA's files.

*And finally, DA Katz has asked the CIU to work with the QCDA's training program and other experts in the field to conduct office-wide trainings in which all QCDA ADAs are informed of these past discriminatory practices and provided practical guidance in selecting jurors in a fair and effective manner.

The CIU's investigation was conducted by Senior Assistant District Attorney Alexis Celestin and its Director, Bryce Benjet.

**STATEMENT BY DISTRICT ATTORNEY MELINDA KATZ**

Today, in court, this Office joined in a motion to vacate two significant convictions from over twenty years ago. This decision is based on clear evidence of unconstitutional discrimination in jury selection. Specifically, a set of notes found in the trial files of a single ADA, who resigned from the office in the late 1990s, contain a detailed outline for the selection of jurors that heavily favors white men, discourages the selection of women, and excludes entirely certain ethnic and religious groups and minorities from jury service. There is also persuasive evidence that the intolerable biases laid bare by these notes were actually used in the selection of the juries in these cases.

The necessity for the actions we take today is clear. We cannot in good conscience stand behind convictions where the selection of the jury is tainted to any degree by discrimination based on race, sex, religion, ethnicity or national origin. If left unaddressed, such discrimination would erode public confidence in our justice system at a time when that confidence is lower than ever before. And it is only by acknowledging this discriminatory practice that we honor the hard work of our dedicated lawyers and staff today who strive to treat <u>all</u> people in our community with dignity and fairness—no matter who they are or where they are from.

We, as an Office, are and will remain committed to eradicating all forms of bias in the criminal justice system. Beyond these two cases, we are reviewing all cases tried by this former ADA to a guilty verdict (ten in total) and have conducted an audit of the bureaus in which this ADA worked at the time. In a review of over fifty trial files of these bureaus from the 1990s, we have not found similar evidence of discrimination. We have trained and will continue to train on subtle forms of implicit bias so that they may play no part in any aspect of our work or the work of others in the criminal justice system that affects the lives of so many.

We are also committed to ensuring that those who commit heinous crimes do not escape the consequences of their actions. For this reason, we have asked that the defendants in these murder and attempted murder cases be held in a pre-trial posture without bail. No infirmity in the evidence at trial has been discovered and the crimes committed unquestionably continue to warrant vigorous prosecution. But we will go forward with these cases fairly, justly, with no hint of bias or discrimination of any kind. We will do what should have been done long ago, and we will do it right.

Everyone accused of a crime is entitled to due process and all citizens of Queens County have an equal right and responsibility to jury service. Our exercise of discretion in selecting jurors must focus on each individual as a human being, and not stereotypes based on gender, race, ethnicity, or religion. This shameful conduct from more than two decades ago does not reflect our values. This is not who we are. I am proud that our actions today demonstrate our collective commitment to stamp out hateful biases of the past and renew our promise to allow all people to meaningfully participate in the criminal justice system.

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