Prosecuting Attorneys' Council of Georgia

State Prosecution Support Division

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# FYI: WILLIS v. STATE

*The Supreme Court Holds that a Defendant is not Presumptively Harmed by a Trial Court's Erroneous Failure to Excuse a Prospective Juror for Cause Simply Because the Defendant Subsequently Elected to Remove that Juror Through the Use of a Peremptory Strike, Overruling or Disapproving a Long Line of Cases.*

In *Willis v. State*, S18P0915 (10/22/18), appellant was convicted of three counts of malice murder and numerous related offenses and he was sentenced to death. He argued that the trial court erred by excusing for cause two prospective jurors for reasons not related to their death penalty views. Specifically, he argued that trial court erred by excusing for cause one prospective juror based on his association with one of appellant's trial attorneys and his stated inclination to give more weight to statements from that trial attorney than to those of other persons, and the other prospective juror based on the alleged fact that she did not "understand[ ] all three of the sentencing options well." But, the Court stated, a defendant has no vested interest in a particular juror but rather is entitled only to a legal and impartial jury and, therefore, the erroneous dismissal for cause of a prospective juror for a reason that is not "constitutionally impermissible," like the reasons here based on possible personal bias and a juror's inability to understand the proceedings, do not require reversal on appeal.

Appellant next argued that the trial court erred by refusing to excuse two jurors based on their death penalty views, neither of whom served on his twelve-person jury. The Court stated that the proper standard for determining the disqualification of a prospective juror based upon his views on capital punishment is whether the juror's views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath, and the decision whether to strike a juror for cause is within the discretion of the trial court.

The Court noted that in *Harris v. State*, 255 Ga. 464, 465 (2) (1986), it held that "[t]he defendant's use of his peremptory strikes will … no longer play a role in our evaluation of the harm caused by the refusal to strike an unqualified juror. *A defendant is entitled to a panel of forty-two qualified*


1590 Adamson Parkway, Fourth Floor, Morrow, Georgia 30260 ▪ (770) 282-6300 ▪ www.pacga.org ▪
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*jurors*. OCGA § 15-12-160 [now OCGA § 15-12-160.1]. … The defendant's failure to exhaust his peremptory strikes before the twelfth juror was impaneled does not render the error harmless." (Emphasis supplied). And then, relying on *Harris*, the Court in *Fortson v. State*, 277 Ga. 164, 166 (2) (2003), held that "causing a defendant to unnecessarily use a peremptory strike on a juror that should have been excused for cause is per se harmful error."

But, the Court stated, in assessing the correctness of its holding in *Harris* and, in turn, its holding in *Fortson*, it must first follow the reasoning of the United States Supreme Court in concluding that there is no basis under the Constitution of the United States for those holdings. The Supreme Court has clearly held that "'peremptory challenges [to prospective jurors] are not of constitutional dimension'" but instead "are one means to achieve the constitutionally required end of an impartial jury." *United States v. Martinez-Salazar*, 528 U. S. 304, 307 (120 SCt 774, 145 LE2d 792) (2000) (quoting *Ross v. Oklahoma*, 487 U. S. 81, 88 (108 SCt 2273, 101 LE2d 80) (1988)). And, the Court found, this case presented no reason to arrive at a different conclusion under the Georgia Constitution. Moreover, the Court found, there was no statutory basis for the presumption of harm in *Harris* and *Fortson*.

Therefore, the Court held, it now agrees with the following from the dissent in *Fortson*: "[T]he mere exhaustion or waste of peremptory strikes should not dictate that a given action regarding a disqualified juror is either invariably harmless or necessarily harmful. Instead, *the focus under current Georgia law should be on whether any unqualified juror was seated* as the ultimate result of errors with respect to jurors challenged for cause." *Fortson*, 277 Ga. at 170 (Carley, J., dissenting, joined by Sears, P. J.) (emphasis supplied).

Accordingly, the Court stated, "[b]ased on all of these considerations, we overrule *Harris*, 255 Ga. 464, and *Fortson*, 277 Ga. 164, and we hold that a defendant is not presumptively harmed by a trial court's erroneous failure to excuse a prospective juror for cause simply because the defendant subsequently elected to remove that juror through the use of a peremptory strike. Instead, such a defendant must show on appeal that one of the challenged jurors who served on his or her twelve-person jury was unqualified." Additionally, the Court overruled *Lively v. State*, 262 Ga. 510, 512 (2) (1992) and *Beam v. State*, 260 Ga. 784, 785 (2) n.3 (1991), two cases in which the Court

relied on the presumed harm holding to reverse the respective defendants' convictions. Also, the Court disapproved its many other cases to the extent they referred to the relevant holdings in *Harris* and *Fortson*. Finally, the Court overruled or disapproved of a plethora of Court of Appeals decisions to the extent that they relied on or referred to the holdings in *Harris* and *Fortson*. A list of all the cases overruled or disapproved can be found in Footnote 3 of the opinion.

Applying the new rule to this case, the Court found that any error the trial court might have committed in refusing to excuse the two prospective jurors at issue here was harmless because neither juror served on appellant's twelve-person jury.


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