

*Ronald M Adams*  
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA :  
 :  
v. : INDICTMENT NO.  
 : CR-2000433  
TRAVIS MCMICHAEL :  
 :  
GREGORY MCMICHAEL, :  
 :  
Defendants. :

5.8  
MOTION REGARDING METHOD  
OF SELECTION OF ALTERNATE JURORS

Travis McMichael and Gregory McMichael, through undersigned counsel, move this Court to begin the exercise of peremptory strikes for the selection of alternates with the first qualified juror in the alternate panel; not the “next qualified panel member,” as set forth in this Court’s Trial Notice.

In support of this Motion, Defendants show this Court the following:

1.

O.C.G.A. § 15-12-169.1 provides in pertinent part as follows regarding the selection of alternate jurors:

Alternate jurors shall be chosen from the same county master jury list **and in the same manner** and have the same qualifications as the jurors already sworn. They shall be subject to the same examination and challenges. The number of alternate jurors shall be determined by the court. The state and the accused shall be entitled to as many peremptory challenges to alternate jurors as there are alternate jurors called. The

peremptory challenges allowed to the state and to the accused in such event shall be in addition to the regular number of peremptory challenges allowed in criminal cases to the accused and to the state as provided by law.

(emphasis added)

2.

In this Court's Trial Notice, it is set forth that,

Once a jury of twelve has been selected, the same process will then be applied to the alternate juror(s) selection, **beginning with the next qualified panel member.**

(Trial Notice, page 2, § d, emphasis added)

3.

It is within the sound discretion of the trial court to direct that selection of alternates take place from the panel of alternates; not to begin with whatever qualified jurors remain after the state and defense have exercised their peremptory challenges. *See Devier v. State*, 253 Ga. 604, 306 S.E.2d at 154-155 (1984) (a death penalty trial in which the court qualified a panel of 42 veniremen from which the 12 trial jurors were selected and qualified an additional 12 veniremen for the selection of three alternate jurors). *See also, Hambrick v. State*, 175 Ga. App. 207, n.9 (1985) (in which the alternate jurors were selected from the last twelve qualified jurors).

4.

Being required to choose alternates from the leftover jurors instead of the qualified jurors that follow the number of jurors needed to select a jury

of twelve deprives the parties of the ability to exercise, or not to exercise, strikes in a strategic manner. Beginning the selection of alternates from the remaining panel of jurors means that a party could be placed in the position of strategically foregoing a strike only to have to reconsider that juror as an alternate. And, just as damaging, the proposed process strips the parties of strategically considering their strikes in the context of the construction of an entire jury; not just the positives and negatives of each potential juror.

Here is an example. The “magic number” for a single defendant being tried in a felony case is 30 (12 jurors plus 9 strikes each for the state and defense). And assume that the Court wished to select two alternates in this hypothetical. The statute directs that “The state and the accused shall be entitled to as many peremptory challenges to alternate jurors as there are alternate jurors called.” OCGA § 15-12-169.1. So there would need to be an additional 6 qualified jurors from which the two alternates would be selected (2 alternates, 2 strikes for state, 2 strikes for defense, equals 6).

So a total of 36 jurors would need to be qualified from which this hypothetical felony jury of 12 plus two alternates would be selected. Assume, as well (for this hypo) that all the jurors are numbered from 1 – 36. If jurors numbered 27, 29, and 30 all had issues that concerned the defense, but in ranking them, the worst were jurors 27 and 30, the defense could

make the decision to forego a strike on Juror 29, knowing that the State had exhausted all their strikes, making Juror 29 the twelfth juror. That choice not to exercise a strike, however, is actually a strike against Juror 30. If the Court goes straight into selecting alternates from the next available qualified panel member (#30), the defense is deprived of the benefit of its strategic choice to forego its final peremptory strike by the Court's proposed method of selecting alternates.

“A litigant is entitled to view the panel as a whole in order to intelligently and effectively use his or her peremptory challenges.” *Van Sickle v. Zimmer*, 807 So. 2d 183, 185 (Fla. App. 2002). *Van Sickle* involved the method of backstriking—the ability to exercise a strike after previously accepting a juror, which is an accepted method in Florida and in the Eleventh Circuit Court of Appeals. *See White v. Singletary*, 972 F.2d 1218, 1222-1223 (11th Cir. 1992). Such a method emphasizes the strategics of picking a whole jury—and not just individual jurors—during jury selection and the need to keep the group dynamics in mind when assembling the group of people who will reach a verdict.

5.

The common method of selecting alternate jurors from a panel designated as qualified alternate jurors (ie: those whose numbers fall after the “magic number” needed to select the jury of twelve), does not favor the

defense or the state. It is a method that enhances jury selection for both parties. Moreover, there is no downside to it. This Court will have to qualify enough jurors to select the jury of twelve and however many alternates the Court decides upon; therefore, those qualified jurors will be available to select from. The method the defense seeks adds no time or additional labor, is fair to both sides, and poses no hurdles for the Court. It does, however, enable both parties to be able to do the difficult work of jury selection in a more effective manner.

THEREFORE, Travis McMichael and Gregory McMichael respectfully move this Court to permit the selection of alternate jurors from the panel of qualified alternates who fall after the panel of qualified jurors for the jury of twelve.

This 2nd day of September, 2021.

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**Certificate of Service**

I hereby certify by my signature that I have served a copy of **5.8: Motion Regarding Method of Selection of Alternate Jurors** on the Office of the District Attorney for the Cobb Judicial Circuit by delivering it by email to:

Linda Dunikoski  
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This 2nd day of September, 2021.

s/Laura D. Hogue  
LAURA D. HOGUE