

TIPS ON JURY SELECTION IN A CONDEMNATION CASE

By:

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There are several statutes in the Georgia Code which govern the voir dire process.

Before the voir dire process begins, the jurors must be impaneled. The process for impaneling is provided in the Code at § 15-12-122. After the jurors are impaneled, individual examination may begin. The right to individual examination of a panel of prospective jurors is codified at O.C.G.A. § 15-12-133 which says:

“In all civil cases, the parties thereto shall have the right to an individual examination of the panel of prospective jurors from which the jury is to be selected, without interposing any challenge. In all criminal cases, both the state and the accused shall have the right to an individual examination of each prospective juror from which the jury is to be selected prior to interposing a challenge. The examination shall be conducted after the administration of a preliminary oath to the panel or in criminal cases after the usual voir dire questions have been put by the court. In the examination, the counsel for either party shall have the right to inquire of the individual prospective jurors examined touching any matter or thing which would illustrate any interest of the prospective juror in the case, including any opinion as to which party ought to prevail, the relationship or acquaintance of the prospective juror with the parties or counsel therefor, any fact or circumstance indicating any inclination, leaning, or bias which the prospective juror might have respecting the subject matter of the action or the counsel or parties thereto, and the religious, social, and fraternal connections of the prospective juror.”

In addition to providing for the questioning of jurors, the Code also provides guidance regarding the removal of prospective jurors for various reasons. O.C.G.A. § 15-12-134, which codifies the challenge for favor, states:

“In all civil cases it shall be good cause of challenge that a juror has expressed an opinion as to which party ought to prevail or that he has a wish or desire as to which shall succeed. Upon challenge made by either party upon either of these grounds, it shall be the duty of the court to hear the competent evidence respecting the challenge as shall be submitted by either party, the juror being a competent witness. The court shall determine the challenge according to the opinion it entertains of the evidence adduced thereon.”

In addition to the Georgia Code, the Georgia Uniform Superior Court Rules provide further guidance on the voir dire process. Specifically, Rule 10.1 states:

“The court may propound, or cause to be propounded by counsel such questions of the jurors as provided in OCGA § 15-12-133; however, the form, time required and number of such questions is within the discretion of the court. The court may require that questions be asked once only to the full array of the jurors, rather than to every juror--one at a time--provided that the question be framed and the response given in a manner that will provide the propounder with an individual response prior to the interposition of challenge. Hypothetical questions are discouraged, but may be allowed in the discretion of the court. It is improper to ask how a juror would act in certain contingencies or on a certain hypothetical state of facts. No question shall be framed so as to require a response from a juror which might amount to a prejudgment of the action. Questions calling for an opinion by a juror on matters of law are improper. The court will exclude questions which have been answered in substance previously by the same juror. It is discretionary with the court to permit examination of each juror without the presence of the remainder of the panel. Objections to the mode and conduct of voir dire must be raised promptly or they will be regarded as waived.”

The statutes and the Superior Court Rules provide a solid starting point for the voir dire process. However, the courts of the state have, on occasion, been called upon to interpret the statutes and their applicability. The courts have held that trial court decisions regarding voir dire and the types of questioning allowed therein will be reviewed on an abuse of discretion standard. In *Lester v. State*, the defendant was barred by the Court from asking two questions during voir dire that he contended would expose bias in the jurors. The Court of Appeals found that the limits a court may place on voir dire questions lie largely with the sound discretion of the court, and the Court of Appeals will not interfere with that discretion unless it is manifestly abused. *Lester v. State*, 343 Ga.App. 618, 807 S.E.2d 922 (2017).

The Courts have also been presented with the issue of whether the trial court may limit the amount of time or number of questions to be asked to individual potential jurors. In *Taylor v. State*, the defendant contended that the trial judge abused discretion in limiting the time for voir dire with certain jurors. The Court of Appeals held that the trial court did not abuse its discretion based upon the questions that had already been asked of the juror in question by both parties. Because the defendant was unable to articulate either on the trial court record or on appeal any questions which he was prevented from asking which may have had any bearing, the Court found that the limitation of the questioning was within the sound discretion of the trial court. *Taylor v. State*, 344 Ga.App. 439, 810 S.E.2d 333 (2018).