

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

ROBERT THOMAS MAXWELL/G-DOFFEE
ADC #108778

PLAINTIFF

v.

No. 5:13-cv-291-DPM

RICHARD CLARK, Sergeant,
ADC Maximum Security Unit; and
RODERICK L. COOKSEY, JR.

DEFENDANTS

Voir Dire Outline

A. Preliminaries

1. Thank you for serving. Echo "Called to Serve."
2. A morning of speaking the truth, *voir dire* [**vor-dyer**] =
twelve people good and true.
3. One to two days – regular hours.
4. Urgent or extraordinary obligations this week?

5. Rules of the Road:

- Can I be completely fair and impartial?
- Can I decide the case based solely on the evidence seen and heard in this courtroom, the law as explained by the Court, and my common sense?
- Questions and Answers. You = you and your immediate family.
- Raise your hand, state your name, and answer.
- Can answer at the bench if uncomfortable answering a particular question in front of others.
- Eighteen, but all – Notepads.
- Questionnaires. Summary. Confirm lawyers have.

- Case Sketch – Not Evidence, Just Background.
 - This civil case involves a prisoner, a prison guard, and a former prison guard. Robert Thomas Maxwell/G-Doffee is an inmate in the Arkansas Department of Correction. Richard Clark is an ADC guard; and Roderick Cooksey is a former ADC guard. G-Doffee claims that Clark and Cooksey violated his Eighth Amendment right to be free from cruel and unusual punishment. More specifically, G-Doffee alleges that Clark and Cooksey used excessive force against him and verbally threatened him. G-Doffee also alleges that Cooksey failed to protect him. Clark and Cooksey deny these allegations.

6. Introductions

- Plaintiff Robert Thomas Maxwell/G-Doffee.
Lawyer = Jordan Tinsley.
- Defendants Richard Clark and Roderick Cooksey.
Lawyers = Renae Hudson and Amber Schubert.
- Witnesses - See chart on next page.

Possible Witnesses	
Robert Thomas Maxwell/ G-Doffee	Richard Clark
Roderick Cooksey	Tracy Bryant
Mary Bryant	Anthony Jackson
William Straughn	Maurice Williams
Beverly Hilliard	Michael Ferricher
Amanda Murray	Leona Mosby
Marvin Hughey	

- Know Parties? Lawyers? Witnesses?

B. Call **Eighteen**, But All – Notepads.

C. General Background Questions

- Legal training or experience?
- Know other panel members?
- Prior jury service?
- Prior court experience? Sued or been sued? Witness?

- Religious convictions against sitting in judgment?
- Negative feelings about civil justice system?
 - Too many lawsuits?
 - If sue, then win?

D. Case-Specific Questions

Remember, answer about you and your immediate family.

Approach to answer sensitive questions.

- Anyone ever employed by a jail, prison, or law-enforcement agency?
- Anyone been in jail? Anyone ever had a family member or close friend who has been in jail or prison? Visit?
- Anyone been the victim of a sexual assault?

- Anyone unable to hear a case involving sexual assault?

- Anyone unable to credit a witness's testimony solely because the witness is incarcerated?
- Anyone unable to award Maxwell/G-Doffee relief solely because he's an inmate?
- Anyone unable to hear a case involving alleged homosexual acts?

E. Juror Question Time

F. The Unasked Question?

G. Lawyers' Follow-Up Questions? FRCP 47(a).

H. Strikes for Cause. FRCP 47(c).¹

¹ **Rule 47. Selecting Jurors**

(a) EXAMINING JURORS. The court may permit the parties or their attorneys to examine prospective jurors or may itself do so. If the court examines the jurors, it must permit the parties or their attorneys to make any further inquiry it considers proper, or must itself ask any of their additional questions it considers proper.

(b) PEREMPTORY CHALLENGES. The court must allow the number of peremptory challenges provided by 28 U.S.C. § 1870.

(c) EXCUSING A JUROR. During trial or deliberation, the court may excuse a juror for good cause.

I. Peremptory Challenges. FRCP 47(b).²

- Three each side.
- Challenging Strikes. Race or Gender? *Batson*.³

Allen v. Brown Clinic, PLLP, 531 F.3d 568, 572 (8th Cir. 2008).

“To challenge a juror for cause, a party must show actual partiality growing out of the nature and circumstances of the case. A district court is required to strike for cause any juror who is shown to lack impartiality or the appearance of impartiality, and, absent abuse of discretion, we will not interfere with the district court’s determination of juror qualifications. The district court is given broad discretion in determining whether to strike jurors for cause because it is in the best position to assess the demeanor and credibility of the prospective jurors.” (quotations omitted)

² **28 U.S.C. § 1870**

“In civil cases, each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

All challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the Court.”

³ **Three-part test.**

“In order to succeed on a *Batson* challenge, a party must satisfy a three-part test. First, an objecting party must make a *prima facie* showing that a peremptory challenge was made on the basis of race. Second, if a *prima facie* showing has been made, the party striking the juror must offer a race-neutral basis for striking the juror in

J. Seat and Swear Jury.

“You and each of you do solemnly swear or affirm to well and truly try the matter now on trial and render a true verdict according to the law and the evidence, so help you God.”

K. Thanks and Goodbye *venire*. [**ven-ire-e**]

question. Third, the trial court must determine whether the objecting party has proven the ultimate question of purposeful discrimination.” *Cook v. City of Bella Villa*, 582 F.3d 840, 854 (8th Cir. 2009) (quotations omitted).

“We . . . strongly urge the district courts to make on-the-record rulings articulating the reasoning underlying a determination on a *Batson* objection.” *Ibid.* (quotation omitted).