

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

FILED

NOV 10 1966

R. C. DODSON, CLERK

Di. *[Signature]* Clerk

JOHNNY LEE DAVIS,

Plaintiff,

vs.

JURY COMMISSION OF MONTGOMERY
COUNTY: JOHN MATTHEWS as Clerk
of the Jury Commission; JUDGE
RICHARD EMMET, JUDGE EUGENE
CARTER, JUDGE PERRY O. HOPFER,
and SHERIFF MAC SIM BUTLER as
Members of the Jury Commission
of Montgomery County; D. W.
CROSLAND, as District Attorney
for the Fifteenth Judicial
District,

Defendants.

CIVIL ACTION NO. 2479-N

ORDER

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The plaintiff, Johnny Lee Davis, a Negro, moves this Court for a temporary restraining order enjoining the District Attorney of Montgomery County, Alabama, from further prosecuting an action against plaintiff, wherein he is charged with violating Alabama criminal statutes relating to rape. See Title 14, §§ 395, 396, Code of Alabama. As a basis for his motion, plaintiff relies on his verified complaint wherein he names as defendants the Jury Commission of Montgomery County, Alabama, and the individual members thereof, together with the District Attorney of Montgomery County, Alabama, and wherein he seeks a declaratory judgment to the effect that, among other things, qualified Negroes are systematically excluded from the jury box and jury roll in Montgomery County and the jury box and the jury roll in Montgomery County do not contain a representative cross-section of the community. See Scott v. Walker, 5th Cir., March, 1966, 358 F. 2d 561; Brooks v. Beto, 5th Cir., July 29, 1966, ___ F. 2d ___; and Labat and Foret v. Bennett, 5th Cir., August 15, 1966, ___ F. 2d ___.

Although plaintiff, in his verified complaint, has averred facts which, if true, will require this Court to enjoin and restrain the defendants from systematically excluding or including Negroes as jurors in Montgomery County, Alabama, and from pursuing a policy, practice or custom of limiting the names in the jury box and on the jury roll in Montgomery County to "members of socially, politically or economically prominent classes," this Court sees no necessity, at this point, for issuing any temporary restraining order enjoining the District Attorney of

Montgomery County, Alabama, from continuing the course of the prosecution of this criminal case by presenting the case to the Montgomery County grand jury. The prosecution in this instance has already commenced. The plaintiff does not claim that the continuance of the prosecution, including the presentation of this matter to a grand jury, will deprive him of any civil or constitutional rights which he is not already being deprived of as a citizen. There will be time for this Court to give adequate notice of plaintiff's contentions to the named defendants and, after such notice, to conduct a hearing upon the merits and to make a determination of the issues herein involved--all before plaintiff will be tried on any indictment which may be returned against him by what he contends to be an illegally constituted grand jury. In this connection, it is appropriate to observe that if this plaintiff is indicted on the charge presently pending against him and the case is scheduled for trial in the Circuit Court of Montgomery County, Alabama, before this Court can adjudicate the issues herein involved, the plaintiff may re-present his application for an injunction at that time.

In accordance with the foregoing, it is the ORDER, JUDGMENT and DECREE of this Court that plaintiff's motion for a temporary restraining order, be and the same is hereby denied.

It is further ORDERED that the Clerk of this Court and the United States Marshal for this district forthwith take the necessary action to have each of the defendants in this cause served with a copy of the complaint and a copy of this order.

It is further ORDERED that this cause be and the same is hereby set for a hearing on plaintiff's application for a declaratory judgment and a preliminary injunction as prayed for in the complaint filed herein on November 5, 1966, said hearing to commence at 10 a.m., Monday, January 9, 1967, in the United States District Courtroom, Montgomery, Alabama.

Done, this the 10th day of November, 1966.

FRANK M. JOHNSON, JR.

CHIEF JUDGE