

Ricky Deron WILLIAMS, Michael Eugene ROGERS,
Rickey PENNEY v. STATE of Arkansas

CR 80-131

613 S.W. 2d 391

Supreme Court of Arkansas
Opinion delivered March 30, 1981.

1. JURY — JURY SELECTION — SYSTEMATIC EXCLUSION BASED ON RACE PROHIBITED. — The present case was consolidated with the case of *State v. Waters* and *State v. Adams* at the trial level for purposes of hearing motions to quash the jury panel, and on appeal, the court held in *Waters & Adams v. State* that the jury panel was constitutionally infirm because of the systematic exclusion of blacks from the panel. *Held*: Since the same jury panel was used in the present case, it is reversed and remanded for a new trial.
2. TRIAL — MOTION TO QUASH JURY PANEL — TIMELINESS. — Where the record reflects that the trial judge acknowledged that the objection to the jury panel was made and then proceeded with the hearing, the State's argument that no objection was timely made to quash the jury panel is without merit.

Appeal from Howard Circuit Court, *Gayle Ford*, Judge;
reversed and remanded.

James P. Massie, *Robert F. Morehead*, and *W. H. "Dub" Arnold*, for appellants.

Steve Clark, Atty. Gen., by: *Dennis R. Molock*, Asst. Atty. Gen., for appellee.

RICHARD B. ADKISSON, Chief Justice. The issue of whether racial discrimination was present in the selection of petit jurors for the trial of this case is controlled by our holding in *Waters & Adams v. State*, 271 Ark. 33 (1980).

It appears from the record that the present case was consolidated with the cases of *State v. Waters* and *State v. Adams* at the trial level for purposes of hearing motions to quash the Howard County Circuit Court jury panel. After a hearing, these motions were denied although found properly raised by the trial court. On appeal we held in *Waters & Adams v. State* that the Howard County jury panel was unconstitutionally infirm because of the systematic exclusion of blacks from the panel. Since the same jury panel was used in the present case, we must reverse and remand for a new trial.

The State's argument that no objection was timely made to quash the jury panel is without merit since the record reflects that the trial judge acknowledged that the objection to the jury panel was made and proceeded with the hearing.

Reversed and remanded.

HICKMAN, J., dissents for the reason stated in *Waters & Adams v. State, supra*.