

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE)	
)	
Appellee)	
)	No. M1988-00026-SC-DPE-PD
v.)	Oral Argument Requested
)	
ABU-ALI ABDUR'RAHMAN)	
)	
Appellant)	

Filed April 2, 2002 (jsr)

**ABU-ALI ABDUR'RAHMAN'S REPLY TO RESPONSE TO
MOTION TO RECALL MANDATE AND TO CONSIDER POST-JUDGMENT FACTS
ESTABLISHING INTENTIONAL RACIAL DISCRIMINATION
IN THE SELECTION OF THE PETIT JURY**

The state does not deny that the prosecution relied on an invidious, false racial stereotype when they struck Robert Thomas because he “appeared uneducated.” The state does not defend this racism, for it is indefensible. The state also does not deny that Robert Thomas was struck for racial reasons when the prosecution claimed that he was “non-communicative.” Again, the state does not defend this racism, for it is indefensible. Rather, the state suggests that this Court sit idly by and send a man to his death when no one disputes that racism infected the jury selection process. The state’s suggestion is both morally repugnant and legally incorrect.

This Court has a legal and moral obligation to rectify the grave wrong which has been perpetrated against Mr. Thomas, Mr. Abdur’Rahman, and the people of the State of Tennessee. If this Court refuses to act, no one will make amends to Mr. Thomas – whose dignity has been trampled by words which have falsely told him that he’s an ignorant Black man, words which cut as deeply as the teeth of Bull Connor’s police dogs. If this Court refuses to act, Mr. Abdur’Rahman will be sent to his death by a process infected by undisputed racism. If this Court refuses to act, “the

identity of the loser is perfectly clear;” it is not simply the Reverend Thomas and Abu-Ali Abdur’Rahman; it is all of us. Bush v. Gore, 531 U.S. 98, 129, 121 S.Ct. 525, 542 (2000)(Stevens, J., dissenting).

Of course this Court has the power to act. This Court “shall be open” to remedy any “injury” done to the person. Tenn.Const. Art. I §17. Mr. Abdur’Rahman is entitled to a remedy in the state courts of Tennessee. And agents of the prosecution cannot close this Court to deny Mr. Abdur’Rahman a remedy simply by withholding evidence of racism until after this Court had acted.¹ Due process demands that where there is a right, there is a remedy; and in the due process balancing of interests, Mr. Thomas’ interest, Mr. Abdur’Rahman’s interest in his life, and the people’s interest in a justice system free from racial prejudice all require that relief be granted. See Motion, pp. 17-21; Burford v. State, 845 S.W.2d 204 (Tenn. 1992).

As Mr. Abdur’Rahman has carefully explained, the prosecution’s racism cannot be insulated through the invocation of an allegedly race-neutral reason for a strike. See Motion, pp. 15-16. This only makes sense. Once the prosecution relies on racial stereotypes and treats African-Americans worse than whites because of race, the harm has occurred. A *post hoc* attempted justification is just that – an attempted justification. It cannot undo the harm that has already occurred to Mr. Thomas, Mr. Abdur’Rahman, or our system of justice. More fundamentally, if the prosecution actually relied on an allegedly valid reason, why didn’t they simply invoke such a reason by itself? The prosecution

¹ The state does not dispute that the prosecution’s notes were not available when this Court previously considered the case. The state does try to dispute the authenticity of the prosecution’s handwritten notes. The notes were provided by the District Attorney’s Office (See Exhibit 1: Affidavit of Bradley A. MacLean, Esq.) and have previously been authenticated by the District Attorney’s Office. See Exhibit 2 (Deposition Excerpt of John Zimmerman, Esq.). The state’s attempt to question the authenticity or validity of the prosecution’s notes is frivolous.

didn't do so precisely because they were trying to hide their racism by fabricating the White-Black comparison between Mr. Thomas and Mr. Harding and by making up other lies to make it appear that they weren't acting with racism. By protesting too much, the prosecution revealed their true racial motivation.

Finally, if this Court does not wish to grant relief based on the motion itself, then the Court should remand the case for further proceedings on the claim, should the Court deem additional development of the record be required. It is true that the claim should be decided based upon all the available evidence. To date, it has not. A remand, therefore, may be appropriate. In fact, that is the process this Court used in the death-penalty case of State v. Branham, 855 S.W.2d 563, 571-572 (Tenn. 1993), *cited in* Motion, p. 19, where new facts arose after judgment.

CONCLUSION

The Reverend Robert Thomas was struck from the jury because of the color of his skin, not the content of his character. The motion should be granted.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served by first-class mail, postage prepaid, on this ____ day of April, 2002 upon:

Office of the Tennessee Attorney General
425 Fifth Avenue North
Nashville, Tennessee 37243

EXHIBIT 1

EXHIBIT 2