

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES OF AMERICA

VS.

CASE NO: 6:17-cr-15-Orl-37KRS

JARVIS WAYNE MADISON

REPORT AND RECOMMENDATION

TO THE UNITED STATES DISTRICT COURT:

This cause came on for consideration without oral argument on the following motion filed herein:

**MOTION DEFENDANT'S UNOPPOSED RENEWED THIRD MOTION
FOR DISCOVERY OF INFORMATION CONCERNING
THE CONFECTION AND CREATION OF THE JURY
VENIRE (Doc. No. 291)**

FILED: May 23, 2018

**THEREON it is RECOMMENDED that the motion be GRANTED IN PART
AND DENIED IN PART.**

In this renewed third motion for disclosure of information regarding the Court's jury plan and its implementation, counsel for Defendant seek information regarding the recently filled 2017 Master and Qualified Jury Wheels. I have previously provided the background and law relevant to the request. Doc. No. 102.

Counsel for Defendant ask for nine categories of information. They state that counsel for the United States does not object to the motion. Doc. No. 291, at 2-4. I will address the requests by related categories.

In request i, counsel ask for any proposed amendment to the Jury Plan. The Jury Plan is a matter of public record and can be obtained by counsel at <https://www.flmd.uscourts.gov/forms/General/2009-AmendedJuryPlan.pdf>. There are currently no proposed amendments to the Jury Plan. Therefore, I recommend that the Court **DENY** request i because there is no responsive information.

In request ii, counsel ask for all voter registration lists provided to the Clerk of Court that ultimately resulted in the creation of the Master Jury Wheel from which the petit jury in this case will be selected, including enumerated specific information. The petit jury in this case will be selected from the 2017 Master Jury Wheel in the Orlando Jury Division. The Clerk of Court has previously provided counsel for Defendant with a CD containing the voter registration list that was used to create the 2017 Master Jury Wheel, the identity of the agency and/or person that provided the CD and the date it was provided. Therefore, I **recommend** that the Court **DENY as moot** request ii.

In requests iii and iv, counsel ask for an electronic copy of the Master Jury Wheel and Qualified Jury Wheel data, including racial, ethnic, gender and age information, for the jury pool from which the petit jury in this case will be selected. The petit jury in this case will be selected from the 2017 Master Jury Wheel and Qualified Jury Wheel for the Orlando Jury Division. The Clerk of Court can provide copies of the following reports regarding the 2017 Master and Qualified Jury Wheels for the Orlando Jury Division: JS-12, AO-12, and MJW-2017 Status Report. The JS-12 and AO-12 reports contain racial, ethnic and gender information. The MJW-2017 Status Report also contains some age information. Therefore, I recommend that the Court **GRANT in part** requests iii and iv and direct the Clerk of Court to furnish the JS-12, AO-12 and MJW-2017 Status Report to counsel and **DENY** the request in all other respects.

In request v, counsel ask for all surveys or reports regarding the composition of the Master or Qualified Jury Wheels for the 2017 Master or Qualified Jury Wheel throughout the district as well as the information (including Scantron batch sheets) used to complete the surveys or reports. The Court has previously found that this request must be narrowed to information about the Master and Qualified Jury Wheels for the Orlando Jury Division. Doc. Nos. 102, 108. As discussed above, the Clerk of Court can furnish the JS-12, AO-12 and MJW-2017 Status Report for the 2017 Master and Qualified Jury Wheels in the Orlando Division to counsel. The MJW-2017 Status Report will include both Scantron data and information provided by jurors electronically, where applicable. Therefore, I recommend that the Court **GRANT in part** request v, direct the Clerk of Court to provide the JS-12, AO-12 and MJW-2017 Status Report for the 2017 Master and Qualified Jury Wheels in the Orlando Division to counsel, and **DENY** request v in all other respects.

In request vi, counsel seek the completed juror qualification forms of all persons qualified for service in the 2017 Qualified Jury Wheels after the Clerk redacts all identifying information. It would be unduly burdensome for the Clerk's Office to redact personal identifying information because it would require manually redacting more than 18,000 juror questionnaires. Additionally, demographic data drawn from these questionnaires is contained in the MJW-2017 Status Report, which may be disclosed as discussed above. Therefore, I recommend that the Court **DENY** request vi. *See, e.g.,* Doc. Nos. 138, 156.

In request vii, counsel also ask for an electronic database detailing all persons disqualified, excused, or exempted and any other materials or information concerning these determinations (including requests for excusals, exemption and orders or notations concerning excusals, exemptions, and disqualifications) for the 2017 Master or Qualified Jury Wheel, with all personal information redacted. The MJW-2017 Status Report for the Orlando Jury Division will provide

statistical information by category of permanent disqualification, excusals and exemptions for jurors in the Orlando Division. Because I have recommended that the Court direct the Clerk of Court to provide the MJW-2017 Status Report for the Orlando Jury Division, I recommend that the Court **DENY** request vii.

In request viii, counsel ask for the juror qualification forms, or an electronic database detailing all persons whose forms were returned by the Postal Service for the Master and Qualified Jury Wheel. The MJW-2017 Status Report for the Orlando Jury Division will provide statistical data regarding juror qualification forms that were returned as undeliverable. Because I have recommended that the Court direct the Clerk to provide this report, I recommend that the Court **DENY as moot** request viii.

In request ix, counsel ask for a comprehensive list of all instances in which a person summoned for jury service failed to appear as directed and the action, if any, subsequently taken regarding the 2017 Master or Qualified Jury Wheel (the “List”). Lists of jurors summoned who failed to appear and the action, if any, taken are not created contemporaneously by the Clerk of Court and, therefore, the List does not currently exist. However, it appears that under the normal procedures of the Clerk of Court such a list for jurors (identified by juror participant number) summoned under the 2017 Qualified Jury Wheel for the Orlando Jury Division who failed to appear during the early months of that wheel and the action taken may be completed in the next two months. Accordingly, I recommend that the Court **GRANT** request ix in part, direct the Clerk of Court to provide the completed List for jurors who failed to appear during the early months of the 2017 Qualified Jury Wheel for the Orlando Division (including the action taken) within 10 days of completion of that List and **DENY** the request in all other respects.

I **further recommend** that the Court order counsel and the parties to keep all information and materials they review, inspect, copy and/or otherwise receive from the Clerk in accordance with the orders of the Court in the utmost confidence and to not divulge any such information or materials to any other person without first receiving approval from the Court.

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1.

Recommended in Orlando, Florida on May 31, 2018.

Karla R. Spaulding
KARLA R. SPAULDING
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge
Counsel of Record
Unrepresented Party
Courtroom Deputy