

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

CHARLES BANDY,

Plaintiff,

vs.

JURY COMMISSION OF LEE COUNTY,
ED E. JOHNSTON, JR., as Clerk
of the Jury Commission; H. A.
McCURRY and A. B. WILLIAMS, JR.,
as Members of the Jury Commission of
Lee County; TOM F. YOUNG, as District
Attorney for the Fourth Judicial
District,

Defendants.

CIVIL ACTION NO. 720-E

FILED

NOV 15 1966

R. C. DOBSON, CLERK

By: *DES*

ORDER

The plaintiff, Charles Bandy, a Negro, filed with this Court as of November 14, 1966, his motion for a temporary restraining order, wherein he asks for an order temporarily enjoining and restraining the District Attorney for the Fourth Judicial Circuit from further prosecuting an action against the plaintiff, wherein he is charged with violating Alabama criminal statutes relating to assault with intent to murder. As a basis for his motion, plaintiff relies on his verified complaint, wherein he names as defendants the Jury Commission of Lee County, Alabama, and the individual members thereof, together with the District Attorney of the Fourth Judicial Circuit in which circuit Lee County is included, and wherein plaintiff seeks a declaratory judgment to the effect that, among other things, qualified Negroes are systematically excluded from the jury box and the jury roll, from which box and roll the grand and petit juries for Lee County are selected, and, further, that the jury box and the jury roll in Lee County, Alabama, 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 Poret 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 Lee County, Alabama, and from pursuing a policy, practice or custom of compiling the jury roll and filling the jury box in Lee County, Alabama, in such a manner that

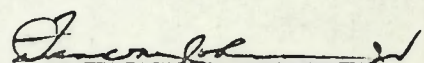
the grand and petit juries in and for said county do not represent a cross-section of the community, this Court sees no necessity, at this time, for issuing any temporary restraining order directed toward possible action of a grand jury that, according to the complaint in this case, was convened on November 7, 1966, a week before the complaint was filed in this Court. Furthermore, this Court sees no necessity, at this time, for issuing any temporary restraining order enjoining the District Attorney of Lee County, Alabama, from continuing the course of the prosecution of the criminal case by presenting the case to the Lee 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 the 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 Lee County, Alabama, before this Court can adjudicate the issues herein presented, 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 14, 1966, said hearing to commence at 10 a.m., Tuesday, December 20, 1966, in the United States District Courtroom, Opelika, Alabama.

Done, this the 15th day of November, 1966.


CHIEF JUDGE