

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN LAWRENCE DIXON,

Appellant

vs.

STATE OF NEVADA

Respondent

) Supreme Court No. 77535

) District Court No. 18-6963

) Electronically Filed
Dec 28 2018 01:25 p.m.

) Elizabeth A. Brown

) Clerk of Supreme Court

FAST TRACK STATEMENT

1. Name of party filing this fast track statement: Steven Lawrence
Dixon.

2. Name, law firm, address, and telephone number of attorney
submitting this fast track statement: Humboldt County Public
Defender, Drawer 309, Winnemucca, Nevada 89446, 775-623-6550.

3. Name, law firm, address, and telephone number of appellate counsel
if different from trial counsel: N/A.

4. Judicial district, county and district court docket number of lower court
proceedings: CR 18-6963, In the Sixth Judicial District Court,
Humboldt County, State of Nevada.

5. Name of judge issuing decision, judgment, or order appealed from:
The Honorable Michael Montero.

6. Length of trial. 2 days.

7. Convictions appealed from: Judgment of Conviction entered the 13th day of November, 2018, finding Steven Lawrence Dixon guilty of Fourth Degree Arson, a category D felony, in violation of NRS 205.025. AA, p. 6
8. Sentence on each count: 12 to 34 months in the Nevada Department of Corrections. AA, p. 6.
9. Date district court announced decision, sentence, or order appealed from: 13th day of November, 2018. AA, p. 6.
10. Date of entry of written judgment or order appealed from: 19th of November, 2018. AA, p. 6.
11. If this appeal is from an order granting or denying a petition for a writ of habeas corpus, indicate the date written notice of entry of judgment or order was served by the court: Not applicable. (a) Specify whether service was by delivery or by mail. Neither.
12. If the time for filing the notice of appeal was tolled by a post judgment motion, specify the type of motion, date of filing of motion and the date of entry of the written order resolving the motion. None of that pertains to this appeal.
13. Date notice of appeal filed. The 26th day of November, 2018.

14. Specify statute or rule governing the time limit for filing the notice of appeal: Nevada Rule of Appellate Procedure 4.
15. Specify statute, rule or other authority which grants this court jurisdiction to review the judgment or order appealed from: Nevada Revised Statute 177.015.
16. Specify the nature of disposition below. Steven Dixon was found guilty by a jury of fourth degree arson and sentenced to 12 to 34 months in the Nevada Department of Corrections. AA, p. 6.
17. Pending and prior proceedings in this court. None.
18. Pending and prior proceedings in other courts. None.
19. Proceedings raising same issue. None are known.
20. Procedural history. The State of Nevada filed a criminal information charging Steven Dixon with child neglect, a gross misdemeanor, and fourth degree arson. AA, p. 1. Steven Dixon plead not guilty. A jury found Steven Dixon guilty of fourth degree Arson. AA, p. 6. Steven Dixon appealed the conviction.
21. Statement of facts. Each party was afforded one peremptory challenge to three potential alternate jurors. AA, p. 17. Namely, Raul Lara, Shelly Graham, and Danielle Delong. AA, p. 17.

1 The State of Nevada exercised its peremptory challenge to
2 remove Raul Lara. AA, p. 17. Steven Dixon made a Batson
3 challenge. AA, p.17. Steven Dixon pointed out that Mr. Lara is
4 Hispanic and nothing he said during voir dire indicated he would be
5 anything other than fair to both sides. AA, p. 17.
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8 After a protracted silence, Steven Dixon suggested "the State's
9 silence, may be an acquiescence" to the Batson challenge. AA, p.
10 17.
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12 As the silence continued, the district court asked the State of
13 Nevada whether they wished to respond. AA., p. 17.
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15 Eventually, the State of Nevada responded that because the
16 jury was heavily weighted in favor of men, the State of Nevada would
17 like to have at least a female alternate on it. AA, p. 17.
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19 The State of Nevada continued, "I don't know much about Mr.
20 Lara; however, I do know enough about Ms. Graham and Ms.
21 Delong. And I'd like to increase their chance of being on the jury.
22 AA, p. 17.
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25 Steven Dixon responded our allegation was based on race, the
26 State's response was the challenge was gender based. AA, p. 19.
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1 Thereafter the court expressed its confusion, asking counsel
2 whether the race of Steven Dixon, rather than the juror, was the basis
3 for the challenge. AA., p. 19.
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5 The court found the State is not striking Mr. Lara based on his
6 race. AA. 19.
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8 22. Issues on appeal. Is nothing other than gender a permissible race-
9 neutral explanation to strike a racial minority from a jury.
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11 23. Legal argument, including authorities.
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13 The court conducts the initial examination of jurors, and the
14 defendant and the district attorney are entitled to supplement the
15 examination. NRS 175.031. Either side may challenge an individual
16 for any cause which would prevent the juror from adjudicating the
17 facts fairly. NRS 175.036(1). Challenges for cause shall be tried by
18 the court. NRS 175.036(2). If the offense charged is punishable by
19 imprisonment for any term, other than death or life, each side is
20 entitled to four peremptory challenges.
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22 The use of a peremptory challenge to remove a potential juror
23 of a cognizable group is a violation of the Equal Protection Clause of
24 the United States Constitution. Cooper v. State, 134 Nev. Adv. Op.
25 104 (12/27/18); Libby v. State, 113 Nev. 251 (1997).
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1 When an objection has been made to a peremptory challenge,
2 the district court must resolve the objection utilizing a three-part test.
3 Cooper, 134 Nev. Adv. Op 104 (12/27/18) (citing Batson v Kentucky,
4 476 U.S. 79 (1986)). First, the opponent of the peremptory strike
5 must make a prima facie showing that a peremptory challenge has
6 been exercised on the basis of a jurors membership in a cognizable
7 group. Cooper, 134 Nev. Adv. Op 104 (12/27/18) (citing Williams v.
8 State, 14 Nev. Adv. Op. 83 (2018)). Second, if that showing has
9 been made the proponent of the peremptory strike must present a
10 race-neutral explanation for the strike. Cooper, 134 Nev. Adv. Op
11 104 (12/27/18) (citing Williams v. State, 14 Nev. Adv. Op. 83 (2018)).
12 Third, the district court, after argument determines whether the
13 opponent of the peremptory strike has proven purposeful
14 discrimination. Cooper, 134 Nev. Adv. Op. 104 (12/27/18) citing
15 Williams v. State, 14 Nev. Adv. Op. 83 (2018)).

16 To establish a prima facie case under step one, the opponent of
17 the peremptory strike must show that the totality of the relevant facts
18 give rise to an inference of discriminatory purpose. Cooper, 134 Nev.
19 Adv. Op. 104 (12/27/18) (citing Watson v. State, 130 Nev. 764
20 (2014)). The standard for establishing a prima facie case is not
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1 onerous and does not require the opponent of the strike to meet his
2 or her ultimate burden of proof under Batson. Cooper, 134 Nev. Adv.
3 Op. 104 (12/27/18) (citing Watson v. State, 130 Nev. Adv. Op. 764
4 (2014). Rather, the opponent of the strike must provide sufficient
5 evidence to permit the trier of fact to draw an inference that
6 discrimination has occurred. Cooper, 134 Nev. Adv. Op. 104
7 (12/27/18) (citing Watson v. State, 130 Nev. Adv. Op. 764 (2014).
8 And, "an inference" is "a conclusion reached by considering other
9 facts and deducing a logical consequence from them" Cooper, 134
10 Nev. Adv. Op. 104 (12/27/18) (citing Watson v. State, 130 Nev. Adv.
11 Op. 764 (2014).

12 There is no way to satisfy step one. Cooper, 134 Nev. Adv. Op.
13 104 (12/27/18). The question is whether there is evidence, other than
14 the fact that a challenge was used to strike a member of a cognizable
15 group, establishing an inference of discriminatory purpose to satisfy
16 the burden of this first step. Cooper, 134 Nev. Adv. Op. 104
17 (12/27/18) (citing Watson v. State, 130 Nev. Adv. Op. 764 (2014)).
18 For example, a pattern of strikes against black jurors included in the
19 particular venire might give rise to an inference of discrimination.
20 Cooper, 134 Nev. Adv. Op. 104 (12/27/18) (citing Batson, 476 U.S. at
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97 (1986)). But a pattern is not the only way to satisfy step one. Cooper, 134 Nev. Adv. Op. 104 (12/27/18) (citing Watson v. State, 130 Nev. Adv. Op. 764 (2014)). Other evidence that may be sufficient includes “the disproportionate effect of peremptory strikes, the nature of the proponent’s questions and statements during voir dire, disparate treatment of members of the targeted group, and whether the case itself is sensitive to bias”. Cooper, 134 Nev. Adv. Op. 104 (12/27/18) (citing Watson v. State, 130 Nev. Adv. Op. 764 (2014)).

The totality of the relevant facts gives rise to an inference of discriminatory purpose on the part of the State of Nevada. Mr. Lara was a racial minority. AA, p. 17. The remaining two prospective alternate jurors were not. AA, p. 17.

When confronted with the Batsun challenge, a protracted silence ensued. AA, p. 17. After prompting by the court the State of Nevada admitted knowing nothing of Mr. Lara, and suggested “gender” as its nonracial motive in seeking to strike Mr. Lara. AA, p. 17.

The use of a peremptory challenge to remove a potential juror of a cognizable group is a violation of the Equal Protection Clause of

1 the United States Constitution. Cooper v. State, 134 Nev. Adv. Op.
2 104 (12/27/18); Libby v. State, 113 Nev. 251 (1997). A totality of the
3 relevant facts give rise to an inference of discriminatory purpose.
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5 Cooper, 134 Nev. Adv. Op. 104 (12/27/18) (citing Watson v. State,
6 130 Nev. 764 (2014)). A discriminatory purpose in removing a juror
7 cannot be justified by a discriminatory purpose.
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- 9 24. Preservation of issues: State concisely how each enumerated issue
10 on appeal was preserved during trial. If the issue was not preserved,
11 explain why this court should review the issue. A Batsun challenge
12 was raised at trial following a peremptory strike of a prospective juror.
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14 25. Issues of first impression or of public interest. Yes.
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16 26. Routing Statement: Pursuant to Appellate Rule 17(b)(1) an appeal of
17 a judgment of conviction resulting from a guilty plea shall be assigned
18 to the Court of Appeals.
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20 Dated this 28th day of December, 2018.
21

22 Matt Stermitz
23

24 Matt Stermitz NSB 3610
25 Humboldt County Public Defender
26 Drawer 309
27 Winnemucca, Nevada 89445
28 775-623-6550

VERIFICATION

1. I hereby certify that this fast track statement complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this fast track statement has been prepared in a proportionally spaced typeface using Microsoft Word in type face of 14 point and Arial type face.
2. I further certify that this fast track statement complies with the page or type-volume limitations of NRAP 3C(h)(2) because it does not exceed 15 pages.
3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track statement and that the Supreme Court of Nevada may sanction an attorney for failing to raise material issues or arguments in the fast track statement, or failing to cooperate fully with appellate counsel during the course of an appeal. I certify the information provided in this fast track is true and complete to the best of my knowledge, information and belief.

Dated this 28th day of December, 2018.

Matt Stermitz
Matt Stermitz