IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN LAWRENCE DIXON	)	Supreme Ct No. 77535
	)	District Ct No. CR 18-6963
Appellant	)	
	)	
vs.	)	
	)	
STATE OF NEVADA	)	
	)	
Respondent	)	

APPELLANT'S OPENING BRIEF

Appeal from Judgment of Conviction
Sixth Judicial District Court, County of Humboldt
The Honorable Michael Montero

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JURISDICTIONAL STATEMENT

A judgment of conviction was filed on the 19th day of November, 2018. Appellant Fastrack Appendix, hereinafter "AFA", pg 6. The notice of appeal was filed on the 26th day of November, 2018, within the time allowed by NRAP 4.

NRS 177.015(3) grants this court jurisdiction to review the judgment of conviction appealed from.

ROUTING STATEMENT

This matter is presumptively assigned to the Court of Appeals, pursuant to NRAP 17(b)(1).

STATEMENT OF ISSUES

(1) Is gender a permissible race-neutral explanation to strike a minority juror; (2) Did the district court conduct an adequate inquiry into the relevant circumstances before deciding whether Steven Dixon demonstrated purposeful discrimination and did the district court make an adequate record; (3) Should the Supreme Court adopt a dual motivation or different analysis for Batson error related to the challenge of an alternate

juror when no alternate juror participates in deliberations; (4) What is the remedy when a district court fails to hold a Batson hearing

STATEMENT OF THE CASE

The State of Nevada charged Steven Dixon with child neglect a gross misdemeanor, and fourth degree arson. AFA, p. 1. Steven Dixon plead not guilty. A jury found Steven Dixon guilty of fourth degree Arson. AFA, p. 6.

Steven Dixon appealed the conviction.

The Supreme Court entered an order directing full briefing.

STATEMENT OF THE FACTS

Each party was afforded one peremptory challenge to three potential alternate jurors. AFA, p. 17. Namely, Raul Lara, Shelly Graham, and Danielle Delong. AFA, p. 17.

The State of Nevada exercised its peremptory challenge to remove Raul Lara. AFA, p. 17. Steven Dixon made a Batson challenge. AFA, p. 17. Steven Dixon pointed out that Mr. Lara is Hispanic and nothing he said during voir dire indicated he would be anything other than fair to both sides. AFA, p. 17

After a protracted silence, Steven Dixon suggested "the State's silence, may be an acquiescence" to the Batson challenge. AFA, p. 17.

As the silence continued, the district court asked the State of Nevada whether they wished to respond. AFA., p. 17.

Eventually, the State of Nevada responded that because the jury was heavily weighted in favor of men, the State of Nevada would like to have at least a female alternate on it. AFA, p. 18.

The State of Nevada continued, "I don't know much about Mr. Lara; however, I do know enough about Ms. Graham and Ms. Delong. And I'd like to increase their chance of being on the jury". AFA, p. 18.

Thereafter the district court expressed confusion, asking counsel whether the race of Steven Dixon, rather than the juror, was the basis for the challenge. AFA., p. 19.

The district court found "there was a mutual explanation that was clear and reasonably specific, and I find that there's no – there's no – the State is not striking Mr. Lara based on race". AFA.19.

SUMMARY OF ARGUMENT

Gender was not a sufficient race neutral justification for removing a minority juror. The district court did not conduct an adequate inquiry into the relevant circumstances before deciding whether the opponent of the peremptory challenge demonstrated purposeful discrimination nor make an adequate record. The act of removing a juror due to race, is no less

distasteful because the juror doesn't deliberate. Failure to conduct an adequate Batson inquiry necessitates reversal.

ARGUMENT

The use of a peremptory challenge to remove a potential juror of a cognizable group is a violation of the Equal Protection Clause of the United States Constitution. Batson v. Kentucky, 476 U.S. 79, 87, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986); J.E.B. v. Alabama ex rel, T.B., 511 U.S. 127, 140-143, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994).

The party asserting the Batson challenge does not need to share the same protected group as the excluded juror. Richards v. Relentless, Inc, 341 F.3d 35, 45 (1st Cir. 2003).

When an objection has been made to a peremptory challenge, the district court must resolve the objection utilizing a three-part test. Watson v. State, 130 Nev. 764, 774. (2014). First, the opponent of the peremptory strike must make a prima facie showing that a peremptory challenge has been exercised on the basis of a jurors' membership in a cognizable group. Cooper v. State of Nevada, 134 Nev. Adv. Op 104 (12/27/18), citing Williams v. State, 14 Nev. Adv. Op. 83 (2018). Second, if that showing has been made the proponent of the peremptory strike must present a race-neutral explanation for the strike. Cooper, 134 Nev. Adv. Op 104

(12/27/18), citing Williams v. State, 14 Nev. Adv. Op. 83 (2018). Third, the district court, after argument, determines whether the opponent of the peremptory strike has proven purposeful discrimination. Cooper, 134 Nev. Adv. Op. 104, (12/27/18) citing Williams v. State, 134 Nev. Adv. Op. 83, 429 P.3d 301, 305 (2018).

To establish a prima facie case under step one, the opponent of the peremptory strike must show that the totality of the relevant facts give rise to an inference of discriminatory purpose[1]. Cooper, citing Watson v. State, 130 Nev. 764, 775, 335 P.3d 157, 166 (2014). The standard for establishing a prima facie case is not onerous and does not require the opponent of the strike to meet his or her ultimate burden of proof under

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[1] The district court is obligated to conduct a sensitive inquiry into all the relevant circumstances before deciding whether the opponent of a peremptory challenge has demonstrated purposeful discrimination by a preponderance of the evidence. Conner v. State of Nevada, 130 Nev. Adv. Op. 49, 327 P.3d 503 (2014). An adequate discussion of the district court's reasoning may be critical to the ability to assess the district court's resolution of any conflict in the evidence regarding pretexts. Kaczmarek v. State, 120 Nev. 314, 332, 91 P.3d 16, 29 (2004).

Batson. Cooper, citing Watson v. State, 130 Nev. 764, 775 (2014). Rather, the opponent of the strike must provide sufficient evidence to permit the trier of fact to draw an inference that discrimination has occurred. Cooper, citing Watson v. State, 130 Nev. Adv. Op. 764 (2014). And, "an inference" is "a conclusion reached by considering other facts and deducing a logical consequence from them" Cooper, citing Watson v. State, 130 Nev. Adv. Op. 764 (2014).

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

When confronted with the Batson challenge, a protracted silence ensued. AFA, p. 17. After prompting by the district court the State of Nevada admitted knowing nothing of juror Lara, and suggested "gender" as its nonracial motive in seeking to strike juror Lara. AFA, p. 17.

The district court did not conduct an adequate inquiry into the relevant circumstances before deciding purposeful discrimination did not exist nor did the district court adequately spell out their reasoning and determinations. Libby v. State, 115 Nev. 45, 54, 975 P.2d 833, 839 (1999). The district court pointed out that Mr. Dixon was not a racial minority

and held "there was a mutual explanation that was clear and reasonably specific, and I find that there's no – there's no – the State is not striking Mr. Lara based on race". AFA, p. 19.

A different analysis for Batson error should not be adopted for alternate jurors who do not deliberate. As pointed out by this court, the harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community. Conner v. Nevada, 130 Nev. Adv. Op, 49, 327 P.3d 503 (2014), citing Batson. The very integrity of the courts is jeopardized when a prosecutor discrimination invites cynicism respecting the jury's neutrality, and undermines public confidence in adjudication. Id, citing Miller-El v. Dretke, 545 U.S. 231, 238, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005). The act of removing a juror due to race, is no less distasteful because the juror doesn't deliberate.

Failure to hold a Batson hearing is structural error requiring reversal and remand for a new trial. Williams, 134 Nev. Adv. Op. 83, 429 P.3d 301, 305 (2018).

CONCLUSION

The judgment of conviction should be reversed and the matter remanded for a new trial.

ATTORNEY CERTIFICATE OF COMPLIANCE

I hereby certify that this brief 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 brief has been prepared in a proportionally spaced typeface using Microsoft Word in type face of 14 point and Arial type face.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the

event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 3rd day of June, 2019.

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