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Summary of Kaczmarek v. State, 120 Nev. Adv. Rep. 37

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***Kaczmarek v. State*, 120 Nev. Adv. Rep. 37,91 P.3d 16 (2004).¹**

CRIMINAL LAW – APPEALS

Summary

Appeal from a conviction and sentence of death by jury trial in the Eighth Judicial District Court, State of Nevada, finding the Petitioner “guilty of burglary, robbery, first-degree kidnapping, and first degree murder, all committed with the assistance of a child.”²

Disposition/Outcome

Affirmed. Amongst the failed challenges raised by the Petitioner, the court overruled *Doyle v. State*³ concluding the Appellant “need not belong to the same [racial] group as the prospective jurors in order to challenge their exclusion on grounds of discrimination.”^{4,5}

Factual and Procedural History

The Appellant claimed “that the district court erred during jury selection by denying his objections to the State’s peremptory challenges of four non-Caucasian prospective jurors.”⁶ The Appellant contends that the State used four of its eight peremptory challenges to remove members of minority population groups. Appellant asserted that the prosecution used its challenges to excuse ‘death penalty skeptics’ from the panel. The district court, relying on *Batson v. Kentucky*⁷ and *Doyle*, overruled Appellant’s objections based on grounds offered by the prosecutor for excusing the jurors in question.⁸ The prosecutor explained his excusals before Appellant made a prima facie case of racial discrimination as required by *Batson*.⁹

Although the court determined that Appellant’s challenge was moot, the court felt compelled to address arguments made by the State responding to the Appellant’s assertions. The court then overruled *Doyle v. State*.¹⁰

Discussion

“Under the equal protection analysis set forth in *Batson*, once the opponent of a peremptory challenge makes a prima facie case of racial discrimination (step one), the burden of production shifts to the proponent of the strike to give a race-neutral explanation (step two).”¹¹

¹ By James Davis.

² *Kaczmarek v. State*, 91 P.3d 16 (Nev. 2004).

³ 921 P.2d. 901 (Nev. 1996).

⁴ *Id.* at 29.

⁵ Although other issues were raised on appeal, only the issue addressed in this summary significantly impacts Nevada law.

⁶ *Id.* at 20 – 21.

⁷ 476 U.S. 79 (1986).

⁸ *Doyle*, 921 P.2d at 29.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 29.

Once the proponent gives a race-neutral explanation, the trial court must decide (step three) whether the opponent has proved purposeful racial discrimination.”¹²

The State, relying on *Doyle*, claimed that because none of the excused prospective jurors were of the same race as the Appellant, the Appellant failed to make a prima facie case of racial discrimination.¹³ The *Doyle* court held that “[t]o establish a prima facie case, the defendant first must show that he is a member of a cognizable racial group and that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant’s race.”

The court, in this case, held that the prima facie test in *Doyle* fails current federal Constitutional scrutiny with respect to its requirement of a similar racial identification. In addition, the court reasserted that the trial court must clearly spell-out the *Batson* three-step analysis, particularly the third step, which may be critical to the court’s ability to access the trial court’s decision.¹⁴ Although the trial court did not “spell-out” its analysis, based on the record the court determined that the State did not use discriminatory means when using its peremptory challenges.

Conclusion

The Nevada Supreme Court overruled *Doyle*. When making a claim of purposeful discrimination when using peremptory challenges, excused prospective juror do not have to be of the same race as the defendant. The court further reemphasized the need for trial courts to “clearly spell-out” its reasoning when making *Batson* determinations.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 30.