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Summary of Hawkins v. State, 127 Nev. Adv. Op. No. 50

Christopher Scott Connell
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Hawkins v. State, 127 Nev. Adv. Op. No. 50 (Aug. 4, 2011)¹
CIVIL PROCEDURE – PEREMPTORY CHALLENGES

Summary

Appeal from a District Court judgment of conviction, by way of a jury verdict, of conspiracy to violate the Uniform Controlled Substances Act.

Disposition/Outcome

The District Court did not err by rejecting the appellant’s *Batson* challenge. Hawkins failed to establish pretext or purposeful discrimination in the peremptory challenge used against the prospective juror in this case. Judgment of conviction affirmed.

Factual and Procedural History

Appellant Collie Hawkins (“Hawkins”) raised a racial discrimination objection, otherwise known as a *Batson* challenge, to the State’s use of peremptory challenges during jury selection.² Hawkins contends that the State used race as an impermissible reason for juror dismissal. The State justified the removal of a “Middle-Eastern computer science professor” because “professors are notoriously liberal.”³ The defense did not object to the State’s reasoning or claim that the reasons were “pretextual” or “illegitimate.”⁴

Discussion

Justice Pickering wrote for the three judge panel. In cases where *Batson* challenges are raised, the court gives deference to the trial court’s finding of whether the peremptory challenge in question had discriminatory intent. There are three stages in a *Batson* challenge: (1) the opponent must establish prima facie racial discrimination during jury selection, (2) the proponent must offer a race neutral explanation for juror dismissal, and (3) the trial court then determines whether each side has “satisfied their respective burdens of proving or rebutting purposeful racial discrimination.”⁵ Here, the defense did not develop the necessary foundation to raise a successful *Batson* challenge, because they did not “traverse an ostensibly race-neutral explanation for (the) peremptory challenge” by establishing pretext in the decision to dismiss the juror. Pretext can be found in a number of ways, including: “(1) the similarity of answers to voir dire questions (for struck jurors and non-struck jurors), (2) the disparate questioning... of minority and non-minority prospective jurors, (3) the use by the prosecutors of the ‘jury shuffle,’ and (4) evidence of historical discrimination against minorities... by the district attorney’s office.” The burden to prove discriminatory intent is placed on the opponent of the peremptory challenge, and Hawkins

¹ By Christopher Scott Connell.

² See *Batson v. Kentucky*, 476 U.S. 79 (1986).

³ *Hawkins v. State*, 127 Nev. Adv. Op. No. 50, at 2 (Aug. 4, 2011)(citations omitted).

⁴ *Id.*

⁵ *Id.*, at 4 (Aug. 4, 2011)(citations omitted).

did not establish pretext or that the prosecution had purposefully discriminated against the prospective juror.

Conclusion

To justify overturning a peremptory challenge on racial discrimination grounds, a party must satisfy all of the elements of the *Batson* test.