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## Summary of Jitnan v. Oliver, 127 Nev. Adv. Op. No. 35

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JUDICIAL DISCRETION – CHALLENGE FOR CAUSE REASONING

**Summary**

Consolidated appeals of a district court judgment where the appellant argued that he was prejudiced by the denial of a challenge for cause of a juror that gave inconsistent statements as to a preconceived bias on the outcome of the case.

**Disposition/Outcome**

The Supreme Court of Nevada held that the district court abused its discretion in denying the challenge for cause because when a prospective juror presents bias or prejudice that could disqualify him or her and responds inconsistently on the issue later, the district court must set forth reasons for its grant or denial of the challenge for cause on the record. However, since the jury that decided the case was fair and impartial, no prejudicial error existed.

**Factual and Procedural History**

Boonsong Jitnan was injured when a vehicle driven by Ryan Oliver hit Jitnan’s cab from behind. Boonsong and his wife, Chanly Than (collectively, “Jitnan”), filed suit against Ryan Oliver and his employers (collectively, “Oliver”) for injuries arising out of the accident. The district court granted partial summary judgment on the issue of liability, holding Oliver was the sole cause of the accident, Oliver was negligent, and Jitnan was not comparatively negligent. The case went to trial on the issue of damages.

During jury selection, the district court asked if any of the prospective jurors had been party to a lawsuit. Prospective juror no. 40 replied that he was sued as a result of a car accident he caused. In further questioning, prospective juror no. 40 gave conflicting responses as to whether he held biased views as to the damages a plaintiff could receive in a personal injury suit and whether he could be impartial and view the evidence in this case objectively to assess an appropriate damages award. Jitnan challenged this juror for cause, but his challenge was denied.

After the court denied his challenge for cause, Jitnan questioned the prospective juror panel regarding the propriety of plaintiffs seeking pain and suffering damages. Juror H, who was later served on the jury, responded that she felt “‘there is a point you can go beyond reason,’ and that there is ‘a tendency to ask for more than is what I believe is reasonable in some cases.’”<sup>2</sup> Juror H also expressed issues with awarding spousal damages. However, Jitnan did not challenge Juror H for cause, suggest she was unacceptable, exercise a peremptory challenge on her, nor inform the court that he would have used a peremptory challenge for her if prospective juror no. 4 had been dismissed for cause. Jitnan did exercise a peremptory challenge on prospective juror no. 40, before exhausting those challenges.

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<sup>1</sup> By Cayla Witty

<sup>2</sup> *Jitnan v. Oliver*, 127 Nev. Adv. Op. No. 35 at 9 (2011).

The seated jury awarded Jitnan \$47,472 in damages, and he appealed.

## **Discussion**

### *Abuse of discretion in denying challenge for cause to prospective juror no. 40*

Jitnan argued that the district court abused its discretion in failing to disqualify prospective juror no. 40 for cause because prospective juror no. 40 had revealed a bias that would prevent him from serving as a juror. To determine if a prospective juror should be removed for cause, the court must decide whether a “juror’s views ‘would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.’”<sup>3</sup> It is not the expressed bias that disqualifies a juror, but the juror’s inability to “lay aside his impression or opinion and render a verdict based on the evidence presented in court.”<sup>4</sup>

Because prospective juror no. 40 stated he could not put aside his past experiences when assessing the instant case, the Court held that the district court erred in denying the challenge for cause without explanation. The Court did not state that all grants or denials of a challenge for cause need to be explained. However, in cases such as the one before the Court, where a prospective juror expresses a potentially disqualifying opinion or bias and is then inconsistent in his or her responses regarding that preconceived opinion or bias, the district court should provide reasoning on record to inform the parties of the basis for the decision and to facilitate informed review.

### *Prejudicial error requiring reversal*

While the Court found that the district court erred in not explaining its denial of Jitnan’s challenge for cause, the Court also found that Jitnan did not show any prejudice that would require reversal. Noting precedent from the Supreme Court of the United States and this state, the Court determined that the erroneous denial of a challenge for cause followed by a party’s use of a peremptory challenge to remove that same juror did not prejudice the party when the jury as seated is impartial.<sup>5</sup> Also, Jitnan failed to show actual prejudice through Juror H because he did not raise any issues with her during voir dire, and he did not take issue with the jury as seated.

## **Conclusion**

In denying Jitnan’s challenge for cause to prospective juror no. 40, the district court abused its discretion by not giving its reasons for denying the challenge for cause on the record. However, Jitnan did not demonstrate any prejudice requiring reversal, thus the Supreme Court affirmed the district court’s judgment.

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<sup>3</sup> Weber v. State, 121 Nev. 554, 580 (2005).

<sup>4</sup> Blake v. State, 121 Nev. 779, 795 (2005).

<sup>5</sup> See U.S. v. Martinez-Salazar, 528 U.S. 304, 310 (2000) and Blake, 121 Nev. at 796.