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Williams v. State, 134 Nev. Adv. Op. 83 (Oct. 25, 2018)

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CRIMINAL LAW: PEREMPTORY CHALLENGES AND CONTRIVED SEXUAL ALLEGATIONS BY MINORS

Summary

The Court determined that (1) a district court must perform a comprehensive three-step analysis when a defendant challenges the use of race in peremptory strikes and that (2) a district court should hold a hearing when a defendant seeks to admit evidence showing that a minor victim could have contrived sexual abuse allegations.

Background

Gregory Williams was convicted of six counts of sexual misconduct for sexually assaulting a minor under the age of 14 and for lewdness with another minor under the age of 14. During jury selection, the State used a peremptory strike to remove Juror No. 23, a black woman. Williams made a *Batson*[2] challenge to the removal, arguing that Juror No. 23 was removed due to her race. The State argued that it dismissed Juror No. 23 for race-neutral reasons. After the State offered its explanation, the district court immediately decided that the State's reason was race-neutral. On appeal, Williams argued that the district court clearly erred in denying his challenge to the State's use of a peremptory strike to remove an African-American woman from the venire.

Williams also argued that he should have been allowed to present evidence that the young girls were able to contrive their allegations because they had been exposed to sexually explicit information at home. He stated that the district court should have allowed him to question the girls under oath outside the presence of the jury to ascertain their awareness of their mother's career in the adult film industry and their exposure to sexual information at home. This appeal followed.

Discussion

II.

Under *Batson v. Kentucky* it is unconstitutional to use a peremptory strike to remove a potential juror based on race. [3] Such discrimination in jury selection constitutes a structural error that requires reversal.[4] In analyzing a *Batson* challenge, district courts should undertake a three-step inquiry. First, the party opposing the peremptory strike must make a prima facie showing that the challenge was exercised on the basis of race. Second, the proponent of the strike must present a race-neutral explanation for the strike. Finally, the Court should hear argument on the issue and determine whether the opponent of the strike has proven intentional discrimination.

A.

In making its prima facie showing, the party opposing the strike must demonstrate "that the totality of the relevant facts gives rise to an inference of discriminatory purpose."[5] The party opposing the strike can present various forms of evidence including a pattern of discriminatory

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[1] By Arthur Burns.
[2] *Batson v. Kentucky*, 476 U.S. 79 (1986).
[3] *Batson*, 476 U.S. at 86.
[4] *Diomampo v. State*, 124 Nev. 414, 423, 185 P.3d 1031, 1037 (2008).
[5] *Batson*, 476 U.S. at 94.

strikes, a disproportionate impact of peremptory strikes, the statements and questions during voir dire, and whether the case itself is sensitive to bias.[6]

Here, Williams argued that Juror No. 23 was excluded solely because of her race. Before Williams was able to make his prima facie showing of purposeful discrimination, the State asserted that it had a race-neutral reason for excluding Juror No. 23. Because the State provided a race-neutral reason for its strike before Williams could make his prima facie case, the Court determined that step one was moot and that it was appropriate to move onto step two.

B.

At step two, the State must provide a race-neutral reason for excluding a potential juror.[7] At this point, the district court need only determine that the State has provided an ostensibly race-neutral explanation for the peremptory strike; the district court should not at this point make a final determination until it has conducted the inquiry required by step three.[8]

Here, the State explained that it struck the potential juror, a physician's assistant, because the juror stated that sometimes "science gets it wrong, even though she's a doctor." Additionally, the State claimed that Juror No. 23 likely would not "deliberate in the group effectively," that she "was closed off," and "her answers were short, [and] she was unwilling to communicate much more than yes or no answers." The Court concluded that these race-neutral explanations satisfied the State's burden at step two.

C.

In step three, the district court must determine whether the defendant has proven purposeful discrimination.[9] The district court "must undertake a sensitive inquiry into such circumstantial and direct evidence of intent as may be available' and consider all relevant circumstances" before dismissing the challenged juror.[10] The district court should sustain the *Batson* challenge when it is "more likely than not that the challenge was improperly motivated."[11]

Here, the district court failed to follow the proper procedures. Upon hearing the State's ostensibly race-neutral explanation for dismissing Juror No. 23, the district court immediately made its final determination, stating "I find it was race-neutral. I don't think it was because of race, but I also noticed that you, [defense counsel], kicked an African American lady off first." After the district court made this determination, Williams asked for an opportunity to respond to the State's race-neutral explanation. The Court found that Williams should not have needed to ask the district court to perform step three of the *Batson* analysis. The Court found that the district court never conducted the sensitive inquiry required by step three.

District courts are usually granted significant deference in exercising their discretion on a *Batson* challenge because the district court is able to assess the demeanor of the prosecutor and the prospective juror. But in this case only part of the basis for the peremptory strike involved the demeanor of the struck juror, and the district court summarily denied the *Batson* challenge without making a factual finding regarding the juror's demeanor. The Court thus concluded that there was no basis to find that the district court based its denial on the State's demeanor argument.

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[6] *Watson v. State*, 130 Nev. 764, 776, 335 P.3d 157, 167 (2014)
[7] *Batson*, 476 U.S. at 97.
[8] *See United States v. Rutledge*, 648 F.3d 555, 559 (7th Cir. 2011).
[9] *Batson*, 476 U.S. at 98.
[10] *Conner v. State*, 130 Nev. 457, 465, 327 P.3d 503, 509 (2014) (quoting *Batson*, 476 U.S. at 96).
[11] *McCarty v. State*, 132 Nev. 218, 227, 371 P.3d 1002, 1008 (2016).

The Court further concluded that the State's argument that it dismissed Juror No. 23 because she expressed skepticism about science appeared pretextual. During voir dire, Juror No. 23 acknowledged that sometimes "science gets it wrong" and that the results of a test using technology can be incorrect. Several other jurors also expressed doubts about science and were not struck. The Court concluded that the State's failure to follow up with questions for Juror No. 23, or to strike the other jurors who expressed similar skepticism, suggested that the State's race-neutral explanation for dismissing Juror No. 23 was pretextual.

The Court found that without a factual finding from the district court, the record did not support the State's demeanor argument. In fact, the information in the record regarding the demeanor of Juror No. 23 seemed to contradict the State's assertions. While the State argued that Juror No. 23 was "closed off" and only gave short answers, the Court found that she gave longer answers when appropriate and displayed a sense of humor. The Court found that the record provided no evidence to support the State's assertion that Juror No. 23 would not deliberate effectively in a group.

The Court acknowledged the considerable human, economic, and social costs of a reversal and retrial. However, given the district court's mishandling of Williams's *Batson* challenge and the pretextual nature of at least part of the State's race-neutral explanation for striking Juror No. 23, the district court clearly erred in denying Williams's *Batson* challenge. Because this was a structural error, the Court reversed and remanded the case for a new trial.

III.

The Court next turned to the issue of the procedure for admitting or excluding evidence to show that the minor victims had the knowledge to contrive sexual abuse allegations. Williams wished to present evidence showing that the girls knew enough about sex to have fabricated their allegations. Williams specifically wished to admit evidence of the fact that the girls' mother sold adult toys and performed in adult films. Despite the statement of one of the girls that her mother was a "porn star" and a statement from the other girl that she had viewed pornography, the State argued that there was no evidence the girls knew about their mother's career.

The district court initially scheduled a hearing to determine what the girls knew about their mother's career but cancelled it after defense counsel interviewed the girls at their school without their mother's permission. Williams refiled his motion twelve days before the trial, and the district court denied it, stating that the evidence lacked relevance unless the State first opened the door by arguing that the girls were sexually innocent and incapable of making up their story. The Court found this ruling to be an error.

A defendant may show that an alleged victim has experienced incidents of sexual conduct and thus has the ability to contrive sexual allegations.[12] Williams's theory of defense was that the girls fabricated their allegations against him because they wanted to get him out of their house. Williams wanted to rebut the assumption that a ten and twelve-year-old girl were too sexually innocent to describe the sexual acts they accused Williams of performing. The district court erred by categorically excluding evidence of the girls' mother's sexual activities because there is no requirement that the State open the door for Williams to present such evidence.

The fact that the girls were exposed to pornography makes it more likely that they would be able to contrive sexual allegations. Williams sought to introduce evidence to show the girls' knowledge of sexual acts, not to attack their character or their mother's character. While it is

[12] *Summitt v. State*, 101 Nev. 159, 163–64, 697 P.2d 1374, 1376–77 (1985).

possible that the potential prejudice for such evidence would outweigh its probative value, the district court should have weighed the probative value against the potential for unfair prejudice. When a defendant moves to admit evidence to show that a young victim has the knowledge to contrive sexual allegations, a district court should give the defendant an opportunity to show that "due process requires the admission of such evidence because the probative value in the context of that particular case outweighs its prejudicial effect on the [victim]."[13]

When offering evidence to show that a young victim had the knowledge to contrive sexual allegations, courts should follow the standard from *Guitron v. State*.[14] The defendant must first make an offer of proof regarding the evidence he wishes to admit. The district court should then hold a hearing in which the defendant presents justification for admitting the evidence. The State should then have the opportunity to show the risk of unfair prejudice outweighs the probative value of the evidence. The State should look at "whether the introduction of the victim's past sexual conduct may confuse the issues, mislead the jury, or cause the jury to decide the case on an improper emotional basis."[15] On remand, the district court should engage in the appropriate analysis to determine whether Williams should be allowed to present the evidence that the girls had the knowledge to contrive sexual allegations against him.

Conclusion

The Court determined that the district court erred by denying Williams's *Batson* challenge and in excluding evidence that the girls had the knowledge to contrive their allegations against Williams. Accordingly, the Court reversed the judgment of conviction and remanded the case to the district court for proceedings consistent with its opinion.

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[13] *Summitt*, 101 Nev. at 163, 697 P.2d at 1377.
[14] *Guitron v. State*, 131 Nev. at 215, 228, 350 P.3d 93, 101 (Ct. App. 2015).
[15] *Summitt*, 101 Nev. at 163, 697 P.2d at 1377.