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Matthews v. State, 136 Nev. Adv. Op. 38 (July 09, 2020)

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JUROR SELECTION: PEREMPTORY CHALLENGES

Summary

The Nevada Supreme Court considered whether the district court erred in denying the Appellant Matthews' objection to the prosecution's peremptory challenge in juror selection. The Court concluded that the district court erred for two reasons: the record refutes the State's non-demeanor explanations for using a peremptory challenge, which indicates that the explanations were pretextual, and because the district court did not fully explain its reasoning as is required in objections raised against a peremptory challenge.

Background

This case is an appeal from a conviction based on a jury verdict of three counts of attempted murder with the use of a deadly weapon and two counts of robbery with the use of a deadly weapon, among other charges. The issue presented in this case arose out of problems during the jury selection process. During jury selection, the prosecution used one of its peremptory challenges to remove prospective Juror No. 342, an African American woman from the jury pool after interviewing her. Matthews' counsel made a *Batson* objection, claiming that the peremptory challenge was based on Juror 342's race.²

The State argued that Juror 342 was excluded because she gave very tenuous responses when asked about being fair and impartial on the jury. Specifically, the prosecutors mentioned that Juror 342 hesitated and rolled her eyes multiple times during questioning, particularly in response to questions on fairness and impartiality. They were also concerned about her views regarding the fairness of the entire criminal justice system.

Matthews' counsel countered that a lot of prospective jury members exhibited similar demeanor – rolling their eyes, looking down, or nodding in agreement or disagreement. In response, the State argued that Juror's 342's demeanor was more concerning for several reasons. When asked about fairness and impartiality, she sighed and said “no” which implied hesitation on her part. Ultimately, the State did not want Juror 342 because they did not want someone who hesitated when asked if they will be fair.

At issue before the Court is the fact that the district court summarily overruled Matthews' objection, without making any specific findings or explaining its reasoning.

Discussion

Using a peremptory challenge to remove a prospective juror based on race violates the Equal Protection Clause of the United States Constitution.³ When an opposing counsel objects to the other party's peremptory challenge, courts use a three-step framework established by *Batson*.⁴ First, the opponent of the peremptory challenge makes a prima facie showing that the challenge was based on race.⁵ Second, if the prima facie showing is made, the proponent presents

¹ By Alina Krauff.

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

³ U.S. Const. amend. IV.

⁴ *Batson v. Kentucky*, 476 U.S. 79 (1986).

⁵ *Williams v. State*, 134 Nev. 687, 689, 429 P.3d 301, 305-06 (2018).

a race-neutral explanation for the peremptory challenge.⁶ The first two steps are not at issue here because the State gave a race-neutral explanation for the peremptory challenge before Matthews made a prima facie showing of discrimination.

At issue here is the district court's actions at step three. After the district court hears arguments from both sides, it determines whether the opponent has proven purposeful discrimination.⁷ A "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 ruling on a *Batson* objection and dismissing the challenged juror."⁸ However, the Court notes that it repeatedly asked the district courts to clearly spell out their reasoning and determinations in ruling on a *Batson* objection because their determinations frequently hinge on the demeanor of the prosecutor exercising the strike, and the demeanor of the juror being struck, both of which can only be witnessed by the district court judge. Here, the district court failed to give any reasoning for overruling Matthews' objection.

In cases where the district court fails to give adequate reasoning, the Court examines the record to determine whether the State's peremptory challenge of Juror 342 was more likely than not motivated by race. Examination of the record is a tool of last resort for the court because generally, the cold record is a poor substitute for demeanor observation since it cannot show physical cues and responses. When the State gives both a demeanor and a non-demeanor explanation for the preemptory challenge, and the district court does not make a factual finding as to the juror's demeanor, the Court must focus on the States non-demeanor explanations for the peremptory challenge in determining whether Matthews demonstrated purposeful discrimination.

However, when a race-neutral explanation is belied, or refuted, by the record, then it is evidence of purposeful discrimination. Here, the record shows that Juror 342 answered "[n]o" to the district court's general question asking if there was any reason she could not be fair and impartial. The district court also asked if anything from Juror 342's previous experiences—her serving as a juror in a civil trial or her father's murder—would affect her ability to be fair and impartial, and she also responded "[n]o." Regarding fairness, Juror 342's response was also standard; in response to a question regarding if her experiences would make her a good juror, she said, "Well, I know I'll be fair. I'll be fair to all the information I receive." Finally, the defense counsel asked Juror 342 if she would want herself as a juror if she were a defendant, and she responded "[y]es." Therefore, nothing in the record suggests that Juror 342's responses were tenuous as the State claimed.

The State also claimed that Juror 342 answered questions about her ability to be fair and impartial less forcefully than other prospective jurors. However, her response was a simple "no," which is identical to the responses given by other prospective jurors. Juror 342's responses regarding the criminal justice system – she thought the system was pretty fair, not perfect when pressed by the prosecutor – were likewise similar to other prospective jurors. Others stated that they thought the system was "pretty fair" and another explicitly said that they thought minorities have it a lot worse than white people when it comes to sentencing. Therefore, the record refutes the State's non-demeanor explanations for using a peremptory challenge on Juror 342, indicating that the explanations were pretextual.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Conclusion

The Court concluded that the district court erred in denying Matthews' *Batson* objection because it did not fully engage in sensitive inquiry and consideration, which is a required step under the *Batson* analysis. The record also supports the finding that the State's reasons for excluding Juror 342 were mere pretext for excluding her based on race. The Court reversed the judgment of conviction based on structural error and remanded this matter for a new trial.