

Appendix D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BEFORE: THE HONORABLE DIANE J. HUMETEWA, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - DAY 1

(Pages 1 through 148, inclusive.)

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1 Otherwise, I think it might be a little disjointed. And
2 hopefully we won't lose anyone overnight.

3 MR. SANDS: I doubt if we will, Judge. I mean --

4 THE COURT: I just want to be able to get them out
5 before the mass exodus occurs with this building as well as
6 across the street.

7 MR. SANDS: I know the government had their first
8 witness who was anxious to get back to Yuma.

9 THE COURT: It's just not going to happen. I'm sorry.

10 MS. BESANCON: We --

11 THE COURT: Yes?

12 MR. SANDS: Could I look at the jury list?

13 THE COURT: Yes. Both counsel can review it.

14 All right. Mr. Sands.

15 MR. SANDS: Judge, I have reviewed the strike list
16 with the government's lawyer, and we have several Batson
17 challenges.

18 THE COURT: Okay. Who are the challenges to?

19 MR. SANDS: We will be raising the Batson issue for
20 juror number 9, juror number 15, juror number 27. Hold it,
21 Judge. Excuse me. 27 and juror number 41.

22 THE COURT: 27, and did you say 41?

23 MR. SANDS: Yes. 9, 15, 27, and 41.

24 THE COURT: Okay. As to 9?

25 MR. SANDS: 9, this juror is Hispanic. His name is

1 Hispanic. He appears Hispanic. He is from Yuma. He did
2 express concerns about travel. But I do not believe he knew
3 that the Court would provide lodging for him. And as a
4 Hispanic, he's a member of an ethnic group that falls under
5 Batson.

6 THE COURT: Ms. Besancon.

7 MS. BESANCON: Your Honor, the reason that the
8 government struck juror number nine was several reasons. First
9 of all, he stated that everyone should be allowed to carry
10 firearms, so long as they do so legally. That indicates an
11 expansive view of firearm ownership and possession.

12 Further, that juror indicated he is a hunter, which
13 also relates to the firearms and possession of firearms at
14 issue in this case. Also juror number nine indicated it would
15 be some hardship for him to come here because he lives in Yuma,
16 it's a three-hour drive, and he has to use vacation days to get
17 here because he doesn't -- he doesn't get this time covered.

18 THE COURT: Well, as to your rationale or your
19 reasoning with respect to hardship because he lives in Yuma, as
20 you know, the jury pool here comes from throughout the state.
21 And there are a number of jurors who are from Yuma. Did you
22 strike all jurors who are from Yuma? And that question also
23 relates to other hunters. There were a number of individuals
24 who indicated that they fished and hunted.

25 MS. BESANCON: That's true, Your Honor. It was a

1 combination of all of these factors, you know, primarily
2 including everybody should be allowed to carry firearms. He's
3 a hunter. And then the fact that this juror would have to
4 drive a long distance to get here. All these factors together
5 led to that strike.

6 MR. SANDS: In reply, Judge, I would say that everyone
7 should -- he stated that everyone should have a firearm
8 legally. That's the law, Judge. There's nothing that
9 indicated he was against firearms or that he was rabidly pro
10 Second Amendment. He said that everyone who legally could have
11 a gun should have a gun. There were a number of people
12 hunting -- as the Court pointed out, several people said
13 that -- as well as other outdoorsmen and hikers. And, finally,
14 he will be given lodging and per diem, and this is a relatively
15 short trial.

16 MS. BESANCON: Your Honor, to respond, I would note
17 that number 26 was also a hunter, and we also struck him for
18 our peremptory strike.

19 MR. SANDS: Number 33 was a hunter too. I don't think
20 it behooves me to go through and list all of the hunters, but
21 there were a number, numerous.

22 THE COURT: Well, in terms of the whole Yuma
23 proximity, my sense was that he did state that although he was
24 from Yuma, he didn't necessarily state it would be an undue
25 burden or hardship for him to be here. He did state that he

1 was working, but he didn't unequivocally state that he couldn't
2 show up. And so I guess the rationale that I'm hearing from
3 the government is that because of his views -- and I tend to
4 agree with Mr. Sands -- he did say that he thought that people
5 were entitled to have and use guns.

6 MS. BESANCON: Your Honor, for the purposes of
7 peremptory strikes, the reason does not have to reach a reason
8 for cause. It just has to be a race neutral reason. And all
9 of these reasons are race neutral reasons that we thought in
10 conjunction warranted the dismissal of the juror from the panel
11 for a race neutral reason.

12 THE COURT: You know, and I will say that under the
13 Batson rules, there should be some showing of a pretext, but
14 because of the multiple reasons that the government has put
15 forward I believe they have met their burden.

16 As to number 15 --

17 Liliana, you might want to just tell them that we've
18 got legal issues, and we'll take another five to ten minutes
19 here and quickly, Mr. Sands.

20 MR. SANDS: We raised the --

21 THE COURT: Number 15.

22 MR. SANDS: Right. We raised the issue to number 15.
23 Fidel is or can be a Hispanic name. Appearances are difficult.
24 He did appear Hispanic. We raised the Batson issue. And I --

25 THE COURT: This is the gentleman who was the part of

1 the securities and --

2 MR. SANDS: Yes, Judge. And we would submit it on the
3 record and statement that's in front of the Court.

4 THE COURT: Ms. Besancon.

5 MS. BESANCON: Your Honor, I don't think there's even
6 been a prima facie showing here that this person falls into any
7 kind of protected class. To us he looks like a white male. If
8 the Court is inclined to reach the second step of the Batson
9 analysis --

10 THE COURT: I would agree, Mr. Sands. I don't think
11 there's a prima facie showing here in terms of whether or not
12 there is a particular racial distinction, although Fidel could
13 be, you know, a Hispanic name. All right. Number 27.

14 MR. SANDS: 27, first off, it is a Hispanic name.
15 This is another individual from Yuma. He -- I believe that
16 there was a -- I don't know why the government struck him. And
17 it strikes us that he falls within the class. He's Hispanic.
18 And we raise our Batson challenge.

19 MS. BESANCON: Your Honor, the government dismissed
20 this juror for a couple of reasons. First, his stepson was
21 convicted of crimes, including firearm crimes or a firearm
22 crime and drug crimes. This case is directly about firearms.
23 And that stepson was actually convicted and sent to prison for
24 those crimes. Also, this person is from Somerton, Arizona,
25 which is a small town where this agent works. He's actually

1 familiar with that last name from investigations. And so there
2 may be a connection there with the stepson and the agent's
3 investigative experience.

4 THE COURT: And in my view, I think that that is
5 sufficient here to overcome your Batson challenge.

6 MR. SANDS: Well, for the record, the Court asked the
7 jurors if they knew any of the defendants or any of the issues.
8 He didn't raise his hand. The agent is supposing that because
9 someone has his name, they may be involved. And we would ask
10 the Court in such a case that we put the agent under oath and
11 we question him on that. And, finally, his stepson was
12 convicted of possession of stolen property, gun discharge, but
13 we don't know which one resulted in the prison sentence or
14 whether it was a result of the probation. And there are
15 numerous other prospective jurors whose family members served
16 time both for guns and for property crimes.

17 THE COURT: Well, I think in terms of the firearms
18 issues with the stepson, I think the follow-up question that I
19 asked is whether or not that experience would prevent his
20 ability to serve, and he answered no, it would not be. He is
21 from Somerton, but -- And it's, in my view, Mr. Sands,
22 sufficient that the agent and the government avow to the Court
23 that there is some familiarity with this last name.

24 Now, I'm not entirely sure whether or not it's just
25 this agent or the multiple agents that may testify at trial

1 that are familiar with the name.

2 And so I think there is sufficient reasons to overcome
3 the Batson challenge here. And so I'm going to overrule you on
4 that.

5 MR. SANDS: I respectfully understand. For the
6 record, the Court, I believe, is -- should not accept the
7 avowal because we don't know what the basis is, and we don't
8 know how far it may extend in this case or in other cases,
9 given names. But I understand the Court's ruling, and I'll
10 move on to my next Batson.

11 THE COURT: All right. Number 41.

12 MR. SANDS: 41, once again, it is a Hispanic name. It
13 falls within the class. And this is the person with the
14 rheumatoid arthritis. We had a colloquy here in which she says
15 that as long as she has her medication, she's fine, and she can
16 serve.

17 MS. BESANCON: The government dismissed this juror
18 because she has uncles who went to prison for drug smuggling.
19 Those are the types of cases that the U.S. Attorney's Office
20 regularly prosecutes.

21 THE COURT: And it's my, again, my understanding in
22 that colloquy that she said she would be able to still serve as
23 a fair and impartial juror.

24 MS. BESANCON: This is not a strike for cause, Your
25 Honor. It's a peremptory cause. And that is the government's

1 race neutral reason that having family members who possibly
2 have been convicted of crimes or felonies actually are
3 relevant to this case.

4 MR. SANDS: I would raise again that we've had a lot
5 of jurors whose spouses were in trouble, cousins, uncles. It
6 doesn't seem that different. I've made the record.

7 THE COURT: Thank you, Mr. Sands. And I do find that
8 with respect to juror number 41, the government did make a
9 prima facie case for the reason that they struck juror number
10 41.

11 With that, are we ready to bring in the jury?

12 MS. BESANCON: Yes, Your Honor.

13 (Prospective jury panelists entered the courtroom at
14 2:06 p.m.)

15 THE COURT: All right. The record may show the
16 presence of the defendant, the presence of the jury panel, with
17 roll call waived.

18 At this time I will ask the courtroom deputy to please
19 read the number of the jurors selected to try this case. And
20 as your number or your -- yes, as your number is called, please
21 do come forward and be seated as directed by our courtroom
22 deputy in the jury box.

23 THE CLERK: Juror number five, you're now juror number
24 one. Please come forward and have a seat in the first jury
25 chair of the top row.